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6 HEARING ON "MODERNIZING THE NATURAL GAS ACT

7 TO ENSURE IT WORKS FOR EVERYONE"

8 WEDNESDAY, FEBRUARY 5, 2020

9 House of Representatives

10 Subcommittee on Energy

11 Committee on Energy and Commerce

12 Washington, D.C.

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16 The subcommittee met, pursuant to call, at 10:00 a.m., in
17 Room 2322 Rayburn House Office Building, Hon. Bobby L. Rush
18 [chairman of the subcommittee] presiding.

19 Members present: Representatives Rush, Peters, Doyle,
20 Sarbanes, McNerney, Tonko, Loeb sack, Butterfield, Welch,
21 Schrader, Kennedy, Veasey, Kuster, Kelly, Barragan, O'Halleran,
22 Pallone (ex officio), Upton, Latta, Rodgers, Olson, McKinley,
23 Griffith, Johnson, Bucshon, Flores, Hudson, Walberg, Duncan, and

24 Walden (ex officio).

25 Staff present: Jeff Carroll, Staff Director; Catherine
26 Giljohann, FERC Detailee; Waverly Gordon, Deputy Chief Counsel;
27 Tiffany Guarascio, Deputy Staff Director; Omar Guzman-Toro,
28 Policy Analyst; Zach Kahan, Outreach and Member Service
29 Coordinator; Rick Kessler, Senior Advisor and Staff Directory,
30 Energy and Environment; Brendan Larkin, Policy Coordinator;
31 Jourdan Lewis, Policy Analyst; Elysa Montfort, Press Secretary;
32 Joe Orlando, Staff Assistant; Lino Pena-Martinez, Staff
33 Assistant; Alivia Roberts, Press Assistant; Tim Robinson, Chief
34 Counsel; Medha Surampudy, Professional Staff Member; Rebecca
35 Tomilchik, Staff Assistant; Tuley Wright, Energy and Environment
36 Policy Advisor; Jennifer Barblan, Minority Chief Counsel, O&I;
37 S.K. Bowen, Minority Press Secretary; Theresa Gambo, Minority
38 Human Resources/Office Administrator; Peter Kielty, Minority
39 General Counsel; Ryan Long, Minority Deputy Staff Director; Mary
40 Martin, Minority Chief Counsel, Energy & Environment & Climate
41 Change; Brandon Mooney, Minority Deputy Chief Counsel, Energy;
42 Kate O'Connor, Minority Chief Counsel, C&T; Brannon Rains,
43 Minority Legislative Clerk; and Peter Spencer, Minority Senior
44 Professional Staff Member, Environment & Climate Change.

45 Mr. McNerney. [Presiding.] The committee will now come to
46 order. Today we will hear from a number of witnesses on
47 modernizing the Natural Gas Act to ensure that it works for
48 everyone. Before we begin today's opening statements, I would
49 like to make a few announcements about today's proceedings.

50 First, I would like to remind everyone in the audience that
51 any manifestation of approval or disapproval of committee
52 proceedings is in violation of the rules of the House and of this
53 committee. Prohibited acts include holding signs, yelling
54 statements from the audience, and any other acts that could
55 disrupt today's proceedings. I ask all persons of the audience
56 to refrain from such actions during today's hearings.

57 Second, I would like to acknowledge that Congresswoman
58 Fletcher from Texas is scheduled to be here who has joined us
59 for today's hearings. We are happy to have her, and under the
60 committee rules our colleagues are welcome to join us for our
61 other hearings, although they are unable to give opening
62 statements or question witnesses.

63 The chair now recognizes himself for 5 minutes.

64 The Natural Gas Act was enacted in 1938, created to regulate
65 the interstate transport of natural gas. Today we convene this
66 hearing to further examine this, the function of this legislation
67 and its broad impact on our communities. To this day, the Federal

68 Energy Regulatory Commission continues to manage pipeline
69 applications through their authority under this act.

70 However, in recent years, the Commission's administration
71 of the act has come under scrutiny. Specific concerns include
72 issues related to rehearing processes, towing orders, imminent
73 domain, landowner rights, and the impact of its infrastructure
74 on climate change. For example, FERC's ability to protect
75 natural gas customers against unjust and unreasonable rates is
76 compromised by its inability to set a refund date, and unlike
77 the Commission's ability to do so under the Federal Power Act
78 for electric utilities. This inequity exists because
79 Congress amended the Federal Power Act, in 1988, to provide FERC
80 with refund authority in electric rates and as yet passed a
81 subsequent fix to the NGA to provide refund authority on par with
82 the Federal Power Act. Further, disagreements exist among FERC
83 commissioners, stakeholders, and natural gas pipeline companies
84 as to what extent, if at all, FERC must consider the climate
85 impacts of its pipelines as a part of its determination that the
86 project is or is not in the public interest.

87 I thank our witnesses for their participation in today's
88 hearing and look forward to discussing how to make sure this law
89 is working in support of everyone's interest. The chair now
90 recognizes Mr. Upton, ranking member of the Subcommittee on

91 Energy, for 5 minutes for his opening statement.

92 Mr. Upton. Well, thank you my friend and chairman for
93 holding today's hearing to examine the role of natural gas in
94 our economy and FERC's responsibilities under the Natural Gas
95 Act. So we know that pipelines are indeed the safest, most
96 efficient way to move energy long distances and they are certainly
97 vital to our nation's economy. Over 2-1/2 million miles of energy
98 pipelines crisscross the nation already, and the need for safe
99 and reliable energy infrastructure continues to grow.

100 Natural gas is an abundant resource across the country and
101 new discoveries in extraction methods, thanks to fracking and
102 directional drilling, have led to a dramatic rise in domestic
103 production. America is now the world's leading producer of
104 natural gas and we are certainly reaping the benefits. The
105 economy is stronger, the shale boom has created millions of jobs,
106 and we are more energy secure -- in fact, independent -- and
107 natural gas is helping to reduce carbon emissions both at home
108 and abroad.

109 In Michigan, we have cut our emissions by over 25 percent
110 in the last decade thanks to natural gas. The Natural Gas Act
111 is the principal federal law that regulates the sale and
112 transportation of natural gas in interstate commerce. And while
113 the natural gas industry has undergone remarkable changes over

114 the decades since its passage in 1938, the law has withstood the
115 test of time and does remain sound. Through the passage of the
116 Natural Gas Act and its amendments, Congress recognized the need
117 to establish a framework to encourage competition within the
118 natural gas industry, protect consumers from monopoly pricing,
119 and promote interstate commerce. As a result, pipelines today
120 are subject to significant federal oversight and regulations.

121 Under the Natural Gas Act, FERC has jurisdiction over
122 virtually all aspects of interstate pipeline operations. Before
123 a pipeline is constructed, FERC must conduct a rigorous
124 environmental review and issue a certificate that finds the
125 pipeline is necessary in the public interest. FERC also has the
126 obligation to ensure that consumers are protected and the rates
127 charged for interstate pipeline services are just and reasonable.

128 FERC has ample authority under current law to require
129 prospective changes in the rates charged by a pipeline company
130 when it can be demonstrated that the rates are no longer just
131 and reasonable. For example, following passage of the Tax Cuts
132 and Jobs Act, FERC required all 129 jurisdictional gas pipelines
133 to make informational filings, and many operators ended up
134 lowering their rates for customers.

135 FERC's regulatory oversight extends beyond pipeline siting
136 and rates. If a pipeline operator wants to shut down a pipeline

137 facility that is uneconomic, they have got to seek permission
138 and approval from FERC in order to protect consumers from service
139 interruptions or rate increases. Despite the fact that
140 pipelines are the safest, most efficient form of transportation
141 and despite the fact that natural gas is helping to reduce CO2
142 emissions across our economy, it has become increasingly
143 difficult and costly to make it through the FERC siting process.

144 Pipeline opponents are challenging projects at virtually every
145 turn, using every tool to delay or block pipeline projects.
146 States are getting more involved too, by delaying or withholding
147 Clean Water Act permits. Increasingly, the courts are being
148 asked to adjudicate these cases which could have broad
149 implications for the Natural Gas Act.

150 FERC, to its credit, does seem to be doing what it can to
151 make informed and careful decisions. Just last week, FERC issued
152 a key decision clarifying what is the congressional intent that
153 eminent domain authority under the Natural Gas Act applies to
154 state land. To be clear, states do not have a veto authority
155 over rights-of-way on state lands when an interstate pipeline
156 has been determined to be necessary and in the public interest.

157 In a separate action, FERC created a new division to focus
158 specifically on landowner issues and to be more responsive to
159 the public, a good thing. It appears our current framework is

160 working, but as we move forward, I am going to certainly continue
161 to remain open-minded about what, if any, changes might be
162 necessary to improve the act.

163 And, Mr. Chairman, while I look forward to hearing from our
164 witnesses today, for sure, I would be remiss not to mention that
165 we have unfinished work to reauthorize the Pipeline Safety Act
166 which expired last September. As you know, PHMSA's authorization
167 expired back then, and work on the reauthorization bill appears
168 to have been stalled between our two committees. Members on this
169 side of the aisle are eager to get the bill back on track to send
170 to the Senate and then to the President. I would like to think
171 that we might be able to get a commitment on this important bill
172 before the day is over, and with that I yield back.

173 Mr. McNerney. The gentleman yields back. The chair now
174 recognizes Mr. Pallone, chairman of the full committee, for 5
175 minutes for his opening statement.

176 The Chairman. Thank you, Chairman.

177 Today's hearing is long overdue. For the first time in many
178 years, the committee will take a broad look at the Natural Gas
179 Act and how the Federal Energy Regulatory Commission implements
180 its many provisions and not just those dealing with infrastructure
181 permitting and siting. It has been too long since this committee
182 explored pricing and what consumers pay for natural gas.

183 Customers have little recourse to request refunds for many
184 overpayments they make. Meanwhile, pipelines get to use certain
185 pricing provisions in the law to thwart the inadequate consumer
186 protections in other parts of the act.

187 Representatives Butterfield and Long have introduced
188 bipartisan legislation to help address this problem. They
189 propose a simple revision to the Natural Gas Act mirroring their
190 refund authority for electric consumers in the Federal Power Act,
191 and I commend them for their important efforts to protect
192 consumers. Of course, it is impossible to ignore the issue of
193 pipelines, their placement, and impact on climate change and
194 landowners. FERC has done itself no favors by taking actions
195 that have stoked the controversy surrounding these matters.

196 Last week, Chairman Rush, Tonko, and I released the Clean
197 Future Act, our climate plan to achieve a hundred percent clean
198 economy. That bill makes clear that FERC should be considering
199 the climate impacts of pipeline proposals, and this is necessary
200 because several commissioners still act as if FERC need not
201 consider climate change as part of its public interest
202 determination. They are essentially ignoring the court's
203 decision in the Sabal Trail case that specifically told FERC to
204 look at greenhouse gas emissions.

205 FERC isn't even considering climate in its National

206 Environmental Policy Act reviews. It is alarming that FERC looks
207 at all other environmental impacts of pipeline projects, yet
208 refuses to take climate change seriously. The Natural Gas Act
209 provisions in the Clean Future Act also highlight the need for
210 a regional review of pipeline projects. FERC must take a more
211 holistic view of the pipelines' infrastructure already serving
212 particular regions in order to determine whether new
213 infrastructure is really needed. I am concerned FERC is simply
214 approving duplicative pipelines with 60-year spans under the
215 guise of market need even when those pipelines are not really
216 necessary.

217 The Atlantic Coast and Mountain Valley pipelines projects
218 clearly illustrate the need for regional review. Both pipelines
219 cross roughly the same areas in the Mid-Atlantic region and in
220 some instances impact the same communities and landowners. Well,
221 why do we need that duplication? And while work on both pipes
222 has been halted, much of the land damage has already been done
223 because FERC allowed these duplicative projects to be begin
224 construction. Last week, just after we announced this
225 hearing, FERC announced it was creating a new division to expedite
226 landowner-related pipeline appeals known as rehearings. Now
227 that sounds good, but we will have to see if FERC is really getting
228 the message. The fact is, FERC's process for siting and

229 constructing intrastate pipelines is not working, especially for
230 landowners. FERC should ensure a fair and equitable process for
231 those seeking to protect their property, but the current process
232 really only considers the needs of the pipeline companies.

233 And today, we will also discuss issues surrounding eminent
234 domain. FERC recently put forward a declaratory order supporting
235 the use of eminent domain to take state-owned lands for PennEast,
236 a proposed pipeline between Pennsylvania and New Jersey. For
237 a independent regulatory agency to help a private party seize
238 state lands to build a pipeline is as wrong as it is bizarre,
239 and FERC should leave the constitutional question on state
240 sovereign immunity to the courts instead of pushing the Trump
241 administration fossil fuel agenda.

242 And before I yield to -- I wanted to yield a minute or so
243 to Mr. Butterfield, but I wanted to welcome Representative Lizzie
244 Fletcher of Texas who has tremendous knowledge of the industry.

245 Thank you for joining us. And I also want to insert for the
246 record a letter, Mr. Chairman, from the Industrial Energy
247 Consumers of America highlighting several critical issues
248 including pricing, reliability, and the need for greater scrutiny
249 of natural gas exports to ensure they serve the public interest.

250 And I would like to yield my remaining minute to Mr.
251 Butterfield.

252 Mr. Butterfield. Thank you very much, Mr. Chairman. I
253 won't take the full minute, but thank you for yielding time.
254 And let me join with you in thanking the four witnesses for your
255 testimony today.

256 Mr. Chairman, I will take an extra second, if I can, to
257 welcome my constituent and neighbor, Rich Worsinger. Rich is
258 the director of Wilson Energy, the municipally-owned electric
259 and natural gas utility in my hometown of Wilson, North Carolina.

260 Rich has over 35 years of experience in the utility industry,
261 nearly 20 of that has been in the eastern part of our state.
262 He understands the industry and the challenges that utilities
263 like Wilson Energy face in providing energy to their ratepayers.

264 Rich will be a valuable voice in today's hearing and I thank
265 him so very much for coming.

266 Thank you, Mr. Chairman. I yield back.

267 The Chairman. I yield back.

268 Mr. McNerney. The gentleman yields back. The chair now
269 recognizes Mr. Walden, ranking member of the full committee, for
270 5 minutes for his opening statement.

271 Mr. Walden. Good morning, Mr. Chairman, and I want to
272 welcome our witnesses and our guests today, and we appreciate
273 you holding this hearing. Members will get a great opportunity
274 to examine the role of natural gas and the challenges and

275 opportunities to upgrade and modernize our nation's natural gas
276 pipeline system. Abundant and affordable domestic natural gas
277 has enabled the United States to become the world's number one
278 energy producer, while simultaneously leading the world in carbon
279 emissions reductions.

280 U.S. consumers are benefiting from low and stable natural
281 gas prices. Our economy is benefiting from the jobs and
282 investments in new infrastructure and manufacturing, and the
283 world is benefiting from a more reliable and stable trading
284 partner. Over the last decade, the United States has become more
285 energy secure than ever before. It wasn't long ago when we
286 thought we were running out of natural gas. Today, we are energy
287 independent. We are net exporters of natural gas and our prices
288 remain historically low and stable.

289 Now, we didn't get here because of some government mandate
290 or regulation, we owe it to technological innovation and American
291 ingenuity to unlock natural gas resources that once were
292 inaccessible. All 50 states are benefiting from the affordable,
293 reliable resources right here in our own backyard. We don't have
294 to depend on Russia or the Middle East for imports anymore. With
295 energy independence we are creating millions of American jobs,
296 good paying American jobs, and our economy and energy security
297 is stronger than ever before.

298 Cheap, domestic natural gas is also helping bring jobs back
299 to the United States where it is used as both a fuel and feedstock
300 in manufacturing. American natural gas is also good for the
301 environment. Our carbon emissions have plummeted as more natural
302 gas is used to generate electricity and our trading partners
303 around the world are lowering their emissions by switching from
304 dirtier sources and unstable suppliers of energy.

305 Thanks to cleaner burning natural gas, America is leading
306 the world in carbon emission reductions, beating the projections
307 of both Waxman-Markey cap and trade bill that some of us had to
308 suffer through the markup on here a few years ago and the Paris
309 Climate Agreement. This goes to show why Republicans continue
310 to reject carbon taxes and the very restrictive regulations of
311 many on the other side of the aisle, some of whom want to keep
312 all this energy in the ground, quote unquote.

313 We are focused on innovation. We are focused on
314 market-driven solutions because they have delivered real results
315 for the American people and for our friends and allies. As the
316 United States continues to emerge as the world's global energy
317 superpower, we must also modernize our infrastructure, especially
318 this vast network of pipelines that we rely upon to move energy
319 safely from where it is produced to where it is consumed, and
320 we have a lot of work to do.

321 Due to pipeline bottlenecks, they recently had to import
322 Russian LNG into Boston Harbor -- amazing. Pipelines are simply
323 the safest, most efficient way to move energy. Congress
324 recognized this fact back in 1938 with the passage of the Natural
325 Gas Act. And while the industry has undergone tremendous change,
326 this statute continues to guide our policy today. Natural gas
327 pipelines are highly regulated, as they should be. Federal
328 Energy Regulatory Commission reviews pipelines to ensure they
329 are necessary in the public interest.

330 FERC also reviews pipeline rates to ensure they are just
331 and reasonable. Pipeline developers are required to complete
332 a rigorous permitting process, sometimes lasting several years
333 with multiple federal and state agencies, as we will hear from
334 our witnesses today. The pipeline permitting process has become
335 increasingly complex and very challenging, not to mention
336 expensive. FERC and gas pipeline companies have been taken to
337 court by some landowners and environmental groups over property
338 rights in the scope of environmental reviews. States like New
339 York and New Jersey are attempting to delay or block pipelines
340 by withholding federal permits and challenging the use of eminent
341 domain. Ironically and unfortunately, without access to natural
342 gas some of these states continue to use heating oil, which is
343 more expensive for consumers and produces more greenhouse gas

344 emissions. Through these challenges, FERC has done a good
345 job of carrying out its responsibilities under the Natural Gas
346 Act. The record has shown FERC to be focused on protecting
347 interstate commerce and fair competition. FERC has also done
348 a good job of balancing the public interest with private property
349 rights, and the announcement of a new division to respond to
350 landowner requests is a testament to their commitment and I
351 applaud that.

352 I plan to use today's hearing to explore these issues through
353 the lens of the consumer and ask some important questions, what
354 is necessary to continue to maximize the benefits of natural gas
355 pipelines for the consumer, for the American economy, and for
356 the security of our nation.

357 And, Mr. Chairman, as you know, we have another subcommittee
358 meeting convening downstairs and then we have the coronavirus
359 all-member briefing over in the Capitol at 11 o'clock, so I know
360 some of us will be going to all three of those things. So, I
361 state that at the head end and I return 9 seconds.

362 Mr. McNerney. I thank the ranking member of the full
363 committee for his comments. The chair would like to remind
364 members that pursuant to committee rules, all members' opening
365 statements shall be made part of the record.

366 I would now like to welcome our first panel of witnesses

367 for today's hearing. The Honorable Cheryl LaFleur, former chair
368 of the Federal Energy Regulatory Commission; Mr. Mike McMahon,
369 Senior Vice President, General Counsel and Secretary, Boardwalk
370 Pipelines, LP, who is testifying on behalf of the Interstate
371 Natural Gas Association of America. Thank you.

372 Richard Worsinger, Treasurer, Board of Directors, American
373 Public Gas Association; and Dr. Susan Tierney, Senior Advisor
374 of the Analysis Group, Inc. Thank you to the witnesses for
375 joining us today. We look forward to your testimony. Before
376 we begin, I would like to explain the lighting system. In front
377 of you is a series of lights. The light will initially be green
378 at the start of your opening statement. The light will turn
379 yellow when you have 1 minute remaining. Please begin to wrap
380 your testimony at that time. The light will turn red when your
381 time has expired.

382 Ms. LaFleur, you are now recognized for 5 minutes.

383 STATEMENTS OF CHERYL LaFLEUR, CHAIRMAN(FORMER), FEDERAL ENERGY
384 REGULATORY COMMISSION; MICHAEL E. MCMAHON, SENIOR VICE PRESIDENT,
385 GENERAL COUNSEL AND SECRETARY, BOARDWALK PIPELINES, LP; RICHARD
386 WORSINGER, TREASURER, BOARD OF DIRECTORS, AMERICAN PUBLIC GAS
387 ASSOCIATION; AND, SUSAN TIERNEY, SENIOR ADVISOR, ANALYSIS GROUP,
388 INC.

389

390 STATEMENT OF CHERYL LaFLEUR

391 Ms. LaFleur. Thank you very much, Chairman McNerney,
392 Ranking Members Walden and Upton, and members of the committee.

393 I am Cheryl LaFleur. I am honored to appear before you today.

394 From 2010 through 2019, I was a commissioner and, at times,
395 chairman of the Federal Energy Regulatory Commission, but I am
396 here today as a private citizen. I am going to focus on two
397 aspects of the Natural Gas Act: Section 7 that grants the authority
398 to build pipelines; and Section 5, petitions for rate reduction.

399 When the Natural Gas Act was passed in 1938 and for decades
400 after that the nation's supply of natural gas was thought to be
401 confined to geographically-constrained regions in the Southwest
402 and the Gulf of Mexico, mostly. The purpose of the act as
403 demonstrated in its language and legislative history was to make
404 sure that limited gas got shared with other regions of the country
405 that needed the gas. FERC, over time, established a practice

406 of using market signals to decide whether there was need for a
407 pipeline. If the proposed pipeline had contracts to sell the
408 gas to people who would buy the gas, in essence, the need for
409 the pipeline was presumed and the Commission worked on other
410 aspects of the application. That system seemed to work pretty
411 well or at least with much less controversy than today for a very
412 long time.

413 In recent years, however, as the committee knows, the gas
414 supply situation has changed dramatically. New extraction
415 technology has allowed gas to be extracted from vast shale plays
416 spanning multiple states in the Southwest, Midwest, and
417 Mid-Atlantic regions. This far greater availability has made
418 gas cheaper, a fuel for electric generation, and increasingly
419 an export commodity.

420 With these changes, FERC's pipeline regime developed in a
421 different era has come under public attack and has been heavily
422 debated at the Commission itself. One key issue is how the
423 Commission determines need. I have believed for some time that
424 given the much greater availability of gas and the result and
425 potential for overbuilding pipelines FERC should no longer rely
426 simply on the existence of contracts. Instead, FERC should build
427 a factual record on the need for the gas, the proposed end uses
428 and the regional need, and look at multiple pipelines if they

429 are in the same region and that would allow FERC to balance the
430 benefits and costs better.

431 Another controversial issue is how FERC considers the
432 climate impacts of pipelines. Now gas has a complicated
433 relationship with climate. It is an improvement over coal,
434 heating oil, and it helps work with renewables, but on the other
435 hand, it has its own greenhouse gases and methane emissions.
436 In 2017, the D.C. Circuit Court of Appeals ruled that FERC was
437 required to consider downstream greenhouse gas emissions of
438 pipelines. How to apply that case has been the subject of
439 considerable disagreement among the commissioners. In
440 April 2018, FERC issued a notice of inquiry to take a comprehensive
441 look at the pipeline process including need, how to do
442 environmental review and other issues. They haven't done
443 anything on that since, and I believe although FERC is very busy,
444 it is time for FERC to return to that notice of inquiry and look
445 at those issues because a new process that was developed in
446 hopefully a bipartisan manner at the Commission would be fairer
447 and more efficient than one that is dictated by court order
448 successively that is done piece by piece.

449 Secondly, on Section 5 reform under the National Gas Act,
450 if a pipeline wants to increase rates it files a Section 4 case
451 at FERC and FERC sets a refund date, usually 5 months later.

452 And once all the trial has happened and they decide what the rate
453 is, the customers pay that new rate, usually higher, as of the
454 refund date. But if a customer or FERC wants to reduce rates,
455 FERC doesn't have the power under Section 5 of the act to set
456 a refund date, so rates aren't changed until the entire end of
457 the case which can be years later after discovery and trial and
458 then the new rate goes into effect. Because no refund date is
459 set, pipelines have an incentive, a natural commercial incentive,
460 to make the litigation last as long as they can, to not settle
461 the case, to avoid cutting rates, and to discourage people from
462 being Section 5 cases.

463 This was highlighted when you all passed the Tax Cuts and
464 Jobs Act in 2017. The committee was able to take relatively
465 prompt action to make sure that electric companies gave back the
466 tax savings to their customers, but on the gas side it was much
467 harder and slower, and in some cases unsuccessful, to have the
468 pipelines give back the tax cuts to their customers. So I have
469 long believed that Congress should amend Section 5 of the Natural
470 Gas Act to allow FERC to set a refund date.

471 Thank you and I look forward to your questions.

472 [The prepared statement of Ms. LaFleur follows:]

473

474 *****INSERT 1*****

475 Mr. McNerney. I thank the witness.

476 Mr. McMahon, you are now recognized for 5 minutes. McMahon,
477 excuse me.

478

479 STATEMENT OF MICHAEL MCMAHON

480

481 Mr. McMahon. Good morning, Chairman and ranking members
482 and members of the committee. I am Mike McMahon of Boardwalk
483 Pipelines and I am testifying on behalf of the Interstate Natural
484 Gas Pipeline Association. I appreciate the opportunity to speak
485 today and look forward to answering any questions you may have.

486 My remarks will focus on three key elements. First, the Natural
487 Gas Act is working. Second, modifications to Section 5 of the
488 Natural Gas Act lead to a natural question, why now? Third,
489 predictability and stability that the Natural Gas Act affords
490 are critical in keeping costs low to consumers.

491 The Natural Gas Act has been a catalyst for significant
492 pipeline infrastructure buildout that has occurred across the
493 United States over the last 15 years. The infrastructure
494 development has benefited the economy by significantly decreasing
495 the cost of natural gas paid by consumers; spurring industrial
496 manufacturing growth; bringing back a significant number of jobs
497 to the country; providing an alternative source of fuel for the

498 generation of electricity; reducing greenhouse emissions. This
499 infrastructure has provided the reliability and flexibility
500 necessary to partner and support increasing levels of electricity
501 generated from renewables. All this has occurred under the
502 current framework provided by the Natural Gas Act.

503 With respect to modification of Section 5 of the Natural
504 Gas Act, FERC is actively utilizing its statutory authority to
505 review pipeline rates. As a result of the Tax Cuts and Jobs Act,
506 FERC recently required all jurisdictional pipelines to file a
507 cost and revenue study similar to those used by the Commission
508 when they are conducting a Section 5 investigation. In more than
509 60 percent of those cases, FERC found there was no further need
510 to review the pipelines' rates. In approximately 30 percent of
511 those cases, pipelines either volunteered to reduce their rates,
512 initiated their own Section 4 rate case, or filed settlements
513 with their customer.

514 FERC initiated Section 5 proceedings against six pipelines
515 as a result of the exercise. The average unadjusted return on
516 equity for those pipelines that elected not to modify their rates
517 in which the Commission found that there was no further review
518 needed was on average 6.5 percent. This process is not the only
519 time that FERC has reviewed pipeline rates. Since 2009, the
520 Commission has brought twenty-five Section 5 cases against

521 natural gas pipelines. All but two of those cases have been
522 settled or dismissed within a 6-month window, indicating the
523 desire by all parties to resolve Section 5 cases in an exponential
524 manner.

525 Finally, since 2005, our industry has spent over 110 billion
526 dollars in new infrastructure, which has brought low-cost natural
527 gas to consumers and energy security to the United States. That
528 investment has been made possible through the capital attainment
529 in the financial markets and is based largely on the
530 predictability and stability that the Natural Gas Act affords.

531 Modifications to the act that change the predictability and
532 stability, increases costs to pipeline operators and ultimately
533 ends up in higher rates to consumers.

534 Looking forward, natural gas is a vital part of how we meet
535 the country's climate goals. Congress should avoid upsetting
536 the current balance between consumers' and investors' interests
537 provided by the Natural Gas Act's longstanding ratemaking
538 principles that continue to work in today's competitive market.

539 I thank you and I look forward to the opportunity to answer any
540 of your questions.

541 [The prepared statement of Mr. McMahon follows:]

542

543 *****INSERT 2*****

544 Mr. McNerney. Thank you.

545 Mr. Worsinger, you are now recognized for 5 minutes.

546

547 STATEMENT OF RICHARD WORSINGER

548

549 Mr. Worsinger. Thank you. Mr. Chairman, Ranking Member
550 Upton, and members of the subcommittee, I appreciate this
551 opportunity to testify before you today on behalf of the City
552 of Wilson, North Carolina and the American Public Gas Association.
553 My name is Rich Worsinger and I am the director of the municipal
554 utility in the city of Wilson that goes by the name of Wilson
555 Energy. Our not-for-profit distribution utility serves some
556 35,000 electric customers and 15,000 gas customers. We are
557 focused on providing safe and affordable services to our
558 customers.

559 APGA is the national association for the nearly 1,000
560 publicly-owned, not-for-profit natural gas distribution systems
561 ultimately representing the interests of natural gas consumers.

562 We therefore commend the subcommittee for its focus on providing
563 the Federal Energy Regulatory Commission, or FERC, with the tools
564 they need to protect consumers from monopoly pipelines.

565 There exists an unnecessary disparity between the Federal
566 Power Act and the Natural Gas Act which have many parallel

567 provisions to accomplish the same goal, just and reasonable rates
568 for energy transmission. Under the Federal Power Act, if a rate
569 complaint is filed and FERC later rules that the rates paid by
570 the customers are unjust and unreasonable, FERC has the authority
571 to make a just and reasonable rate effective to when the complaint
572 case began. That means customers receive refunds, including
573 interest, of the overcharges. This is not only fair, but tempers
574 the tendency of the transmission provider to overcharge in the
575 first place.

576 FERC does not have the same authority under the Natural Gas
577 Act. A finding that rates are too high and must be lowered can
578 be made effective only after that determination, prospectively.

579 There is no good reason to treat these energy consumers
580 differently. This inequity exists because Congress amended
581 Section 206 of the Federal Power Act in 1988 to provide FERC with
582 refund authority in electricity rate complaint cases. Congress
583 did not pursue a mirrored change to Section 5 of the Natural Gas
584 Act in large part because gas pipelines then were required to
585 have their pipeline rates reviewed every 3 years. But that
586 requirement ended in 1992 and a subsequent fix to the Natural
587 Gas Act has never passed. Lack of refund authority has
588 caused billions of dollars in overcharges to natural gas consumers
589 in all these years. These are dollars that could have gone into

590 local businesses in a community or into paying food bills and
591 mortgages or into investing in a child's education. Instead,
592 they have flowed upstream to the pipelines' coffers. Perhaps
593 the best example has been the Tax Cuts and Jobs Act of 2017 that
594 lowered the federal tax rate dramatically on corporations
595 including regulated natural gas pipelines.

596 When the tax rate took effect, January 1, 2018, pipeline
597 costs went down instantly. Did consumers of interstate pipelines
598 get lower rates at that time? No. FERC identified many
599 pipelines that had excessive earnings, yet it took over a year
600 for consumers to get fair rates because the Natural Gas Act Section
601 5 does not mirror the Federal Power Act Section 206.

602 The issue is particularly important to public gas systems
603 because about 95 percent of them, including my system, are served
604 by just one pipeline. We must rely on FERC to determine that
605 our monopoly pipeline is not overcharging us, but the current
606 system allows pipelines to keep overcharges rather than refunding
607 them to ratepayers. Of course, we support sensible new gas
608 transmission pipeline infrastructure. This change will not
609 affect the ability of pipelines to source capital to expand.
610 All the FERC commissioners that have supported this modernization
611 certainly did not see such an impact. There are no valid reasons
612 for this statutory inequity to continue.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

28

613 I thank you for this opportunity to testify and look forward
614 to working with the subcommittee to provide this critical consumer
615 safeguard, and both the city of Wilson and the American Public
616 Gas Association fully support H.R. 5178. Thank you.

617 [The prepared statement of Mr. Worsinger follows:]

618

619 *****INSERT 3*****

620 Mr. McNerney. Thank you.

621 Dr. Tierney, you are now recognized for 5 minutes.

622

623 STATEMENT OF SUSAN TIERNEY

624

625 Ms. Tierney. Thank you, Mr. Chairman, Ranking Member, and
626 members of the subcommittee. My name is Susan Tierney from
627 Analysis Group in Denver and I am a former utility and
628 environmental regulator.

629 Much has changed in the decade since the Natural Gas Act
630 was enacted. Americans now wholeheartedly enjoy the benefits
631 of low-cost natural gas and FERC's approvals of pipelines have
632 supported that outcome. Even so, the nation's energy systems
633 are in transition. For example, with one exception, every member
634 of this subcommittee comes from a state with a goal to reduce
635 greenhouse gas emissions or rely on zero carbon supply or
636 renewable energy, and yet FERC continues to approve pipelines
637 affecting states that anticipate much lower use of gas in the
638 future.

639 Over the past 2 decades, FERC has approved 487 pipelines
640 and has rejected two. These projects total an amount of capacity
641 that is nearly double the all-time peak day for gas use in the
642 United States. Over one-third of the approved pipelines have

643 occurred in the last 3 years alone. My testimony reflects my
644 review of hundreds of comments that were filed in response to
645 FERC's notice of inquiry about the changes FERC should make in
646 its 1999 policy statement. Stakeholders are clearly sharply
647 divided about the views for need for change. Oil companies, gas
648 companies, trade associations, business groups, labor unions,
649 politicians from gas-producing states all argue that things are
650 working fine. Others, including states' attorneys general,
651 state regulators, politicians from states affected by pipeline
652 projects and concerned about carbon emissions, other academics,
653 environmental organization, libertarian think tanks, and
654 individual citizens think FERC should change how it reviews its
655 projects.

656 Notably, the U.S. Supreme Court has found that the principal
657 purpose of the Natural Gas Act is not to promote natural gas
658 development at any cost or in any way, but rather to do so to
659 encourage the orderly and reasonable development of the natural
660 gas system. The NGA directs FERC to approve gas projects only
661 if they are required for the public convenience and necessity.

662 FERC's approach needs to be updated to reflect current conditions
663 and to ensure that the agency carries out its duties in a way
664 that credibly satisfies the public interest purpose of the NGA.

665 A key element of building confidence in FERC's review would

666 be for FERC to change its near-exclusive reliance on precedent
667 agreements as the basis for determining whether new projects are
668 needed. When FERC reviews a pipeline application, the agency
669 looks to see if the applicant has an agreement with someone who
670 wants to purchase capacity on that pipeline. FERC treats such
671 agreements as decisive in determining that a pipeline is needed.

672 But such agreements reflect the private interest of two parties
673 and a precedent agreement alone cannot universally demonstrate
674 that a pipeline project is needed to meet the public convenience
675 and necessity.

676 FERC's current approach undervalues the many other factors
677 such as demand forecasts, availability of capacity in regional
678 pipelines, impacts on landowners, and so forth that are relevant
679 when reviewing whether an approval of a particular pipeline serves
680 the public interest. FERC's reviews should compare the
681 anticipated benefits of a project against its anticipated
682 economic and environmental costs. These are real costs with gas
683 pipelines that are not reflected in the prices paid by parties
684 who use and benefit from the project.

685 As an economic regulator, FERC should use a more fulsome
686 need analysis that relies on a more fulsome and systematic
687 benefit-cost framework. FERC's overreliance on precedent
688 agreements is especially problematic in cases where pipeline

689 developers use eminent domain to take land for their projects.

690 Taking land cannot be for the purpose of serving private
691 interests. FERC should give great weight to the interests of
692 landowners and FERC should give great weight to the views of states
693 that especially will be impacted in one way or another by the
694 pipelines that go through them. Finally, FERC should
695 consider both the direct and indirect environmental impacts
696 associated with the gas that is transported across the pipelines.

697 Other agencies that review bridges look at the impacts of
698 vehicles on the bridges; FERC should do the same for its pipelines
699 as well and review the impacts of gas. Finally, FERC should
700 quantify and monetize greenhouse gas emissions impacts wherever
701 reasonably feasible to do so. Emissions introduce greenhouse
702 gas, serious climate impacts on public health, infrastructure,
703 and economic activity. Thank you very much.

704 [The prepared statement of Ms. Tierney follows:]

705

706 *****INSERT 4*****

707 Mr. McNerney. We have now concluded opening remarks. We
708 will move to member questions. Each member will have 5 minutes
709 to ask questions of our witnesses. I start by recognizing myself
710 for 5 minutes.

711 Commissioner LaFleur, you were an early proponent of Section
712 5 refund reform, writing back in 2010 a concurrence that you
713 support legislation action to append the Natural Gas Act to align
714 it with the Federal Power Act. Could you talk a little bit more
715 about your experience with the Tax Cuts and Jobs Act and the
716 difference between FERC providing refunds under the Federal Power
717 Act versus a process under the Natural Gas Act?

718 Ms. LaFleur. Yes, thank you, Mr. Congressman.

719 When the tax cut was passed, FERC looked at the electric
720 companies, the transmission companies that are covered by the
721 Federal Power Act and they all either had formula rates where
722 the tax rates immediately or the next time they did their formula
723 automatically went down to customers, or if they had stated rates,
724 FERC promptly filed Section 206s to require them to recompute
725 their stated rates for the lower taxes. With the pipeline
726 companies it is extremely a long, slow process to file a 205.
727 FERC did not have the resources to file a Section 205 against
728 the several hundred pipelines it regulates. And also, so FERC
729 came up with a process where we made up a new form, Section 501,

730 that required the pipelines to report in what their revenues would
731 be with the new tax law in effect, and staff took several months
732 to go through all of those forms and figure out which ones were
733 most overearning, and then as to those had to start Section 205.

734 So, because of all that it took actually more than a year,
735 sometime before the 30 percent that actually reduced their rates,
736 reduced their rates, and had there been the refund authority,
737 I think FERC could have much more promptly delivered those savings
738 to customers.

739 Mr. McNerney. Thank you.

740 Ms. Tierney or Dr. Tierney, you note in your testimony that
741 FERC could rely on a cost-benefit analysis to determine project
742 need. You also note that doing so would better align FERC with
743 responsibilities under the Natural Gas Act. Could you explain
744 the basic framework behind this analysis and how it would be
745 well-suited?

746 Ms. Tierney. Sure. Under the Natural Gas Act, again which
747 has a public interest test, FERC today only relies on precedent
748 agreements. FERC could identify the review of the opportunities
749 and benefits associated with providing natural gas into a market.

750 This is the kind of review that FERC and states do routinely
751 when they are looking at new facilities. Additionally,
752 FERC could look at the dollar costs associated with infrastructure

753 investment, other impacts in the areas that are going to be served
754 by the pipeline, as well as the environmental impacts. And
755 balancing both those environmental impacts and economic benefits
756 and costs would be a great improvement over today.

757 Mr. Wilson. So how exactly does the precedent agreement
758 rule work? It is not a rule, but how does that work these days?

759 Ms. Tierney. A precedent agreement is an indication that
760 a customer has an intention to purchase gas service, gas
761 transportation service on a pipeline. The pipeline relies upon
762 that as part of its application to FERC for a certificate of public
763 convenience and necessity which is an approval of the pipeline.

764 If FERC -- although FERC has in its 1999 policy statement
765 said that it would rely on a lot of relevant factors, gas demand,
766 other pipeline capacity, and so forth, if there is a precedent
767 agreement in place, FERC, in effect, checks the box that the
768 project is needed. And there are instances where there are
769 affiliated companies who are both the buyer and the seller of
770 gas who are putting those precedent agreements in place and they
771 are particularly instances where FERC should be doing a more
772 fulsome review of the project's public interest benefits and cost.

773 Mr. Wilson. Thank you. And again, Commissioner LaFleur,
774 can you speak to the importance of jointly considering the impacts
775 of multiple proposed pipelines for the same region?

776 Ms. LaFleur. Yes. And I think a good example of this is
777 the Atlantic Coast and Mountain Valley pipelines which are both
778 going through very, very similar routes with a similar start point
779 across West Virginia and North Carolina. I think there is a
780 concern that if pipelines are considered seriatim, just looking
781 at whether someone has, including as Dr. Tierney said, an
782 affiliate, someone has signed up to buy the gas, you could result
783 in the situation where two pipelines, in these cases very large
784 pipelines, are sited right near each other. But they both, if
785 you look at them in a vacuum, look like they are needed, but when
786 you look collectively at how much gas the state of North Carolina
787 or wherever is going to need, you can see that they could have
788 much more readily been combined into one pipeline.

789 Under the National Environmental Policy Act, you are
790 supposed to look at alternatives, and I think FERC should look
791 more holistically on whether there are better alternatives than
792 building every single pipeline that comes along.

793 Mr. McNerney. Thank you. The chair's time has expired.

794 The chair now recognizes the ranking member of the subcommittee
795 for his 5 minutes.

796 Mr. Upton. Thank you again, Mr. Chairman.

797 So, Mr. Worsinger and Mr. McMahon, a question for you. So
798 what percentage of a consumer's bill is the transmission charge

799 in the pipeline, of the pipeline cost versus the rest of the rate
800 that they may pay usually on a monthly basis? It is a transmission
801 charge to actually transfer that energy on the pipeline; is that
802 right?

803 Mr. McMahon. In my testimony, Congressman, I put a chart
804 in there that said EIA estimated it at 12 percent in this current
805 low price environment.

806 Mr. Upton. So is that about the right standard in North
807 Carolina? Is that about what it is?

808 Mr. Worsinger. Well, first, you are asking me to estimate
809 something I don't have exact facts for, but I would suggest it
810 is more than 12 percent, maybe closer to 25 percent, but it
811 certainly is significant.

812 Mr. Upton. Yes, because I just know for, you know, we have
813 a lot of natural gas in Michigan and I know that when the tax
814 cut bill passed a few years ago, at least in Michigan it was almost,
815 I mean within a couple of months, I mean there was a reduction
816 to consumers across the board that went through the state
817 regulatory commission approval. And, but I didn't ask them, you
818 know, the timing or the percentage in advance of the hearing.

819 Mr. McMahon, how does FERC establish the pipeline rates to
820 make sure that they are "just and reasonable," the term there
821 all of us have used, the natural gas --

822 Mr. McMahon. When a pipeline files a rate case, it presents
823 all of its costs, so you are going to have the cost to operate
824 and maintain are part of the cost, cost to kind of do the back
825 office. You know, currently there are costs for cyber, so all
826 the costs including your taxes, property taxes, all that are added
827 up. And then what happens is then you look at your throughput
828 and then you basically divide your cost over throughput and a
829 result of that you get a per unit rate.

830 So let's say you have a thousand dollars and a hundred units,
831 you would have a ten-dollar rate, so that is the rate that would
832 be established assuming that there is one maximum applicable rate
833 and that would be the rate you could charge. So you have your
834 cost, your return, all that then divide it by throughput equals
835 the rate. That is kind of a simple way of thinking about it.

836 Mr. Upton. And there is a public process, is that right,
837 where --

838 Mr. McMahon. Yes.

839 Mr. Upton. -- consumers can weigh in?

840 Mr. McMahon. Yes. When a pipeline files its rate case,
841 it gives notice to all of its customers, so all of the customers
842 have the ability to participate in that proceeding. You have,
843 in certain regions of the country you have the state utility
844 commissions participating or state advocates participating, and

845 then you have FERC staff who participates in the litigating
846 proceeding and more and more as a consumer protection agency-type
847 of advocate.

848 Mr. Upton. Now I know that, you know, if we look, really,
849 after the last 15 years, 20 years' fracking, et cetera, we have
850 got the abundance, you know, we now can export it, which we
851 couldn't do it before. We have sped up that process through
852 bipartisan legislation that President Obama signed into law.
853 And I know as it relates to Michigan, we, and I think you cited
854 this -- I still say "Commissioner" on the floor.

855 Ms. LaFleur. That is okay.

856 Mr. Upton. You know, we have a renewable percentage that
857 we are going to exceed and it is going to continue to get better,
858 which is good. We are phasing out coal in Michigan and natural
859 gas is coming in big time. In fact, I worked on some permitting
860 processes that will allow any new company in one of my small towns,
861 eight traffic lights, a \$1.1 billion new facility that will be
862 on line in about a year. It is incredible, 600 people working
863 to put this up. Obviously, it is going to be cleaner. It is
864 going to be replacing coal. Sadly, we have a nuclear plant that
865 is closing down, but it will, you know, pitch in for that to agree.

866 But where I am getting to is a number of companies in
867 communities because that are seeing, you know, it is supply and

868 demand, there is more, supply/demand is still growing, but the
869 costs are coming down, so a number of utilities are now asking
870 consumers to actually lock in at a rate that is lower per therm
871 than it has been over the last couple of years. And again, that
872 is they are working through the public service commissions --
873 that is what they call it in Michigan. So, it seems as
874 though the process is working and the costs are significantly
875 less, whether it be farmers or others -- I guess I am finishing
876 with a statement instead of a question. It is my time and we
877 have a new chairman who is being rough on me, so anyway, I yield
878 back.

879 Mr. Peters. [Presiding.] Thank you, Mr. Upton. I will
880 ask a question.

881 Mr. Upton. Yes.

882 Mr. Peters. But, first, I want to say I think it would be
883 hard to argue that the proliferation of natural gas displacing
884 coal hasn't been good from an environmental perspective, if for
885 no other reason than getting rid of the metals that are polluting
886 the atmosphere. And I do think that you know, people claim credit
887 for as a result of that for lower carbon emissions, but what we
888 don't talk about is methane. And, actually, one of the most
889 damaging climate change agents are the short-lived climate
890 pollutants including methane.

891 So, I want to ask Ms. LaFleur and Dr. Tierney is whether
892 you believe that under the Natural Gas Act considering the ruling
893 in 2017, is it within the jurisdiction of FERC to regulate methane
894 as a condition of permit approval?

895 Ms. LaFleur. FERC -- thank you for the question. FERC has
896 the authority to consider methane and, in fact, the methane leaks
897 -- I know that is not a word everyone likes. But the methane
898 emissions from pipelines are considered a direct environmental
899 effect to the pipeline and they are carefully toted up on the
900 environmental impact statement.

901 So that is not the part that is in dispute, which is the
902 greenhouse gases at the end. FERC doesn't, however -- and FERC
903 can place conditions on the construction --

904 Mr. Peters. Right.

905 Ms. LaFleur. -- to make sure that the construction limits
906 methane emissions, but long-term safety regulations under the
907 jurisdiction under PHMSA, the Pipeline and Hazardous Materials
908 Safety Administration, so FERC doesn't regulate methane once the
909 pipeline goes into service.

910 Mr. Peters. Dr. Tierney?

911 Ms. Tierney. I am not a lawyer, so I am just going to
912 respectfully refrain from making a legal opinion about what FERC
913 is authorized to do.

914 Mr. Peters. Okay.

915 Ms. Tierney. But I could observe that when other federal
916 agencies such as the Department of Transportation is looking at
917 the environmental impacts of using a road or a bridge, they use
918 the emissions associated with vehicles going across that bridge.

919 You could imagine that FERC could use a similar approach when
920 it is looking at the indirect emissions associated with the gas
921 that is transported.

922 Mr. Peters. Right.

923 Ms. Tierney. There are methane emissions associated with
924 producing gas and consuming gas and those ought to be taken into
925 consideration.

926 Mr. Peters. There are methane emissions at production, at
927 transmission, and at -- or delivery, I suppose.

928 Ms. Tierney. Yes.

929 Mr. Peters. So I suppose that is true. But what I am trying
930 to get at here is, you know, whether you can, it seems clear that
931 you can consider the impacts of methane as you discuss a pipeline,
932 but you don't have the authority to say, listen, as a condition
933 of this approval, we want you to use better equipment, better
934 pumps to -- and we want you to monitor methane, is my impression.

935 Commissioner, is that what you believe?

936 Ms. LaFleur. I believe FERC -- not we, but FERC has the

937 authority to set rules on the construction of methane and I guess
938 FERC could say --

939 Mr. Peters. Construction of pipeline.

940 Ms. LaFleur. -- this pipeline is not in the -- construction
941 of the pipeline and how much methane they release and FERC could
942 say, we don't find this in the public interest because you don't
943 have enough methane control. Come back with a better plan.

944 Mr. Peters. Okay.

945 Ms. LaFleur. But FERC can't directly regulate the operation
946 once it --

947 Mr. Peters. This is the thing that concerns me. It strikes
948 me we are asking FERC to do macro regulation, macro policy at
949 a micro level, pipeline by pipeline. But to me, and I think that
950 is the most important thing if we are going to, if you want to
951 make any deal with natural gas as a bridge fuel, a so-called bridge
952 fuel, we have to deal with methane. And so maybe, Mr.
953 McMahon, I would leave it to you, what do you think the industry
954 can do to make sure that we are not emitting methane and how do
955 you think it should be monitored and how do you think it should
956 be controlled?

957 Mr. McMahon. Well, the industry is fully committed to
958 reducing methane emissions, and one of the things that we have
959 undertaken over the last several years is reviewing of all of

960 our operations. You know, what equipment do we have especially
961 in compressor stations that can be updated or modernized, where
962 are the potentials for leaks, enhancing our testing and using
963 different technologies to test for leaks. The other thing
964 almost every pipeline I am aware of is very much concerned about
965 is what is called loss and not accounted for, that gas which just
966 you can't find and where that is coming at --

967 Mr. Peters. I only have 30 seconds.

968 Mr. McMahon. Okay.

969 Mr. Peters. Let me just say the price of natural gas is
970 cheap. That is why it doesn't regulate itself. I mean, I just
971 don't believe this notion that lost gas is a huge loss to the
972 industry. It is not like gold.

973 So here is my suggestion. If the industry is serious about
974 it, we would love your help with the Super Pollutants Act which
975 would impose monitoring and emission regulations on new sources
976 and existing methane sources. We would love to work with you
977 on that because I think to me that is the base problem I have
978 with natural gas right now.

979 And my time has expired. I now recognize the gentleman from
980 Ohio, Mr. Latta.

981 Mr. Latta. Well, thank you, Mr. Chairman, and thanks for
982 holding today's very important hearing. And also, thanks to our

983 witnesses for being with us today.

984 By 2040, global energy demand is expected to grow by 28
985 percent. The market in India alone is valued at \$2.7 trillion
986 by 2040. If the United States is to play a role in meeting future
987 global energy demand, our nation must develop increasingly
988 advanced technologies that will outcompete our rival nations.

989 A homegrown U.S. advance to the energy economy will shape and
990 even lead such a market, furthering our energy security,
991 geopolitical influence, and economic opportunities abroad.

992 I recognized the importance of these opportunities when I
993 introduced House Res.597 which calls the United States to support
994 and not limit access to all domestic energy resources in an effort
995 to achieve full energy security. As we build out our
996 technologies, significant new infrastructure will be needed to
997 meet the challenges like new gas pipelines, CO2 pipelines, and
998 also high-voltage pipelines.

999 If I could start, Mr. McMahon, with you. In your testimony,
1000 you speak about the substantial benefits that have resulted from
1001 the growth in natural gas development and the wider energy
1002 renaissance in our country. Would you go into more detail about
1003 what you have seen and how companies have reinvested in their
1004 communities as a result of the growth?

1005 Mr. McMahon. Yes. In one of the areas that operate along

1006 the Gulf Coast is you see a true resurgence in the manufacturing
1007 process and where natural gas is being used as a feedstock, you
1008 know, big companies associate there, the job growth that has
1009 occurred in those areas. I know that in recent areas in the
1010 Marcellus and Utica areas, which are, you know, in your home state
1011 as well, you are seeing people moving projects and industries
1012 that typically are found on the Gulf Coast in to take advantage
1013 of those resources.

1014 So what we have seen is a resurgence of the manufacturing
1015 chemical that used to be done offshore because people would be
1016 using crude oil to crack, to make those products are now using
1017 the natural gas and the natural gas products and they are moving
1018 them out of the Gulf Coast into more local areas and you are seeing
1019 tremendous job growth in those areas.

1020 Mr. Latta. Well, that is very important because in my
1021 congressional district I have 60,000 manufacturing jobs and I
1022 mean we make everything, so when you are thinking about from steel
1023 to float glass and you go right down the line to very small
1024 companies that are out there manufacturing. And also, not only
1025 manufacturing for something in this country, but also for export.

1026 And, you know, I think it is important that as you look at
1027 that because of those multiple reasons why companies look to,
1028 you know, come into an area, they look at things like, you know,

1029 what is out there. And one of the things that I know when I have
1030 talked to the hundreds and hundreds of companies that I have
1031 visited in very short periods of time over the last several years,
1032 you know, cost of energy is always at the top of their list and
1033 then, also, the availability into the future of that energy.

1034 And so, when you are looking at that, you know, how are we
1035 going to make sure that when someone is looking at an area that
1036 we can say that they have that energy that they have it into the
1037 future, because again I think what you said that, you know, you
1038 are bringing it from different parts of the country to other areas,
1039 how important it is then for companies to make sure that they
1040 have that energy locally?

1041 Mr. McMahon. Well, that is where we work with our customers
1042 to make sure that we bring natural gas to the communities and
1043 to the areas. That is the reason you have seen such an expansion
1044 of the interstate pipeline system. You know, where it used to
1045 primarily move gas from the south to the north, it is now moving
1046 gas east-west, north-south, and south-north. So we have been
1047 moving pipeline to attach to new manufacturing and new demand
1048 centers as they grow and so the Natural Gas Act has given us the
1049 flexibility to meet the changing needs and location of
1050 manufacturing and production.

1051 Mr. Peters. Thank you.

1052 Dr. Tierney, how can FERC and other federal agencies better
1053 support this infrastructure buildout and how can these agencies
1054 better coordinate with state and local entities?

1055 Ms. Tierney. Well, to begin with, as I mentioned in my
1056 original statement I believe that FERC should do a better job
1057 of taking into consideration state objectives. Many states are
1058 quite interested in developing their gas resources. Others are
1059 interested in reducing reliance on natural gas. Those
1060 considerations, I believe, are things that FERC should be looking
1061 at when it is considering whether a project is needed.

1062 But I also think in light of the comment that you made at
1063 the earlier about the important global trends that are going on
1064 in energy use, one can think about the role of U.S. manufacturing
1065 and U.S. production and innovation in selling products to those
1066 other nations that don't rely on importing things like gas or
1067 oil over time, but then can use renewable resources in those
1068 locations as well.

1069 Mr. Latta. Well, thank you very much, Mr. Chairman. My
1070 time has expired and I yield back.

1071 Mr. Peters. Thank you. The chair now recognizes the
1072 gentleman from Iowa, Mr. Loeb sack, for 5 minutes.

1073 Mr. Loeb sack. Thank you, Mr. Chair. I want to thank
1074 Chairman Rush and Ranking Member Upton for holding this hearing

1075 today and I want to thank you to the witnesses, a big thank you
1076 to the witnesses for being here as well. I really appreciate
1077 this.

1078 Although Iowa does not produce any natural gas, natural gas
1079 accounts for over one-fifth of the total energy consumed in our
1080 state. And nearly 60 percent of the natural gas delivered in
1081 Iowa is consumed in the industrial sector and plays a critical
1082 role in supporting also the production of clean-burning biofuels.

1083 So we use natural gas to help produce ethanol and what have you,
1084 which are also a key economic driver in our rural communities
1085 as you know. Additionally, over half of Iowa residents use
1086 natural gas as their primary heating fuel to heat their homes.

1087 Iowans regularly face, as you know, some of the harshest winters,
1088 although this winter hasn't been so bad so my costs haven't been
1089 quite so high.

1090 But it is absolutely critical that folks who rely on natural
1091 gas to heat their homes are not facing unnecessarily high costs
1092 when they are doing so. We have heard from several witnesses
1093 today regarding how modernizing Section 5 of the Natural Gas Act
1094 to allow for refund authority aligned with what already exists
1095 under the Federal Power Act could help put more power in the hands
1096 of natural gas consumers, which is something I think a lot of
1097 us are interested in doing and when it comes to fighting for just

1098 and reasonable rates. And I know my colleague, Mr. Butterfield,
1099 has recently introduced bipartisan legislation on this issue as
1100 well.

1101 So I want to start out, Commissioner LaFleur, I would like
1102 to start with you. Do you agree with Mr. McMahon's -- and I will
1103 get to you, Mr. McMahon, when this is over, so tell me if I am
1104 misrepresenting you. But do you agree with Mr. McMahon's
1105 testimony on why Section 5, as fair as it is, specifically argues
1106 that because pipelines have negotiated rates there is no need
1107 for Section 5 reform and that any potential rate reductions would
1108 not flow to consumers? So, just if you would comment on that.

1109 Ms. LaFleur. No, I respectfully disagree. First of all,
1110 when FERC does use its Section 5 authority, FERC looks closely
1111 at what percentage of the pipelines as on negotiated versus stated
1112 rates and it is certainly true that there are pipelines with a
1113 lot of negotiated rates where this doesn't matter. But people
1114 like Mr. Worsinger's customers and public gas and other customers
1115 of gas distribution companies often pay the stated rate and so
1116 it would matter to them to have the Section 5 reform.

1117 Also, at least in -- I used to run a gas distribution company
1118 although a long time ago, and as Congressman Upton said earlier,
1119 the state regulators make you give back the money if you pay more
1120 or less to the pipeline companies. Maybe not that same day, but

1121 the next time you have a rate case, which is required on a regular
1122 basis, the distribution companies would be required to reduce
1123 their rates because they are regulated, you know, in Des Moines,
1124 or all of the state capitals.

1125 Mr. Loeb sack. Right, okay. Yes.

1126 And I would like to go to you, Mr. Worsinger, then, if you
1127 would like to respond.

1128 Mr. Worsinger. Yes. Thank you, Congressman.

1129 I think the best way to talk about this is refer to the Tax
1130 Cuts and Jobs Act of 2017. I have the honor of not only overseeing
1131 the City of Wilson's gas system, but I also look after their
1132 electric system. With our electric system, our electric
1133 wholesale provider had their costs reduced by the Tax Cuts and
1134 Jobs Act. They lowered our rates effective January 1, 2018.
1135 We immediately got the results of those lower costs.

1136 Our gas transmission pipeline took over a year for them to
1137 reduce rates and they did not do a refund because they didn't
1138 have to, and that not only affected the city of Wilson, there
1139 are actually eight municipally-owned gas systems in the state
1140 of North Carolina all served by that one pipeline who did not
1141 get the reduced rates for over a year. And what happened to that
1142 money that was the costs were reduced, the pipelines kept it.

1143 Mr. Loeb sack. Right.

1144 Mr. McMahon, would you like to respond?

1145 Mr. McMahon. Yes. There is a couple points is, to be clear,
1146 I would agree with Commissioner LaFleur that if somebody is paying
1147 the stated rate and the stated rate goes down they get a benefit.
1148 But over 60 or closer to 70 percent on most pipelines now are
1149 people who are not paying the stated rate, so they wouldn't, unless
1150 the rate fell below their contract levels, they would not get
1151 a benefit. There would be nothing to refund to those customers,
1152 so I want to be clear on that.

1153 There has been, both Mr. Worsinger and Commissioner LaFleur
1154 have mentioned the frustration about the tax cut. But I would
1155 like to remind the committee that FERC has had a longstanding
1156 policy when it comes to pipeline rates of not allowing single
1157 issue rate adjustments, so if the pipeline, if the rates had gone
1158 up, we wouldn't have been able to go in and ask just for a price
1159 increase because our taxes went up. We would have to file a
1160 full-blown Section 4 case.

1161 This is different than the electrics who, as Commissioner
1162 LaFleur said, are on some type of index-based or formula rates.

1163 Mr. Loeb sack. Right. I did have a question connected to
1164 that but I ran out of time and I will yield back now. Thank you.

1165 Thank you all again.

1166 Mr. Peters. Thank you. The chair now recognizes the

1167 gentleman from Michigan, Mr. Walberg, for 5 minutes.

1168 Mr. Walberg. Thank you, Mr. Chair, and thanks to the panel
1169 for being here. The state of Michigan has one of the largest
1170 natural gas deposits in the entire nation -- we are thankful for
1171 that -- with almost 1.1 trillion feet of underground natural gas
1172 storage. As harsh winters affect my state, natural gas and its
1173 ability to be stored in our underground capacity make energy
1174 demand a lot easier to plan for. It is no surprise that more
1175 than 75 percent of households rely on natural gas, my own included,
1176 to heat their homes in Michigan.

1177 Combined with its low environmental impact and its strong
1178 reliability, natural gas is a great alternative for powering our
1179 country. There is no question the impact that natural gas has
1180 had on the everyday lives of Michiganders and our state's economy.

1181 As decisions related to the future of the energy grid of the
1182 nation are considered, policies looking to further increase
1183 production and expansion of natural gas infrastructure are
1184 critical. And so, Mr. McMahon, it seems that some of the
1185 policies in the Clean Future Act offered by my colleagues on the
1186 other side might lead to a decrease in new pipeline
1187 infrastructure. Do you think that instead we should be
1188 encouraging oil and gas production and construction of new natural
1189 gas pipelines in this country?

1190 Mr. McMahon. I think that we -- the natural gas pipeline
1191 industry plays an important role in the growing economy of this
1192 country and the providing of jobs. As you have seen over the
1193 last 15 years, we have been allowed to build pipelines and then
1194 that has spurred the economy. As more natural gas is produced,
1195 there are markets, you know, in foreign countries where I think
1196 LNG would be a great benefit to the global climate concerns and
1197 I think continued production of natural gas will keep the costs
1198 low to consumers; increase the availability of manufacturing for
1199 the manufacturing sector especially since gas serves both as a
1200 fuel and a feedstock in a number of processes.

1201 Mr. Walberg. Which certainly means we need a growing labor
1202 force in that area as well. And so, you know, my constituents
1203 include many skilled tradeworkers employed by the energy industry
1204 all across the district. Can you discuss the type of jobs that
1205 the natural gas pipeline industry provides for employees and
1206 contractors and the type of jobs and extent, numbers of jobs that
1207 are needed at this point in time?

1208 Mr. McMahon. Well, on the construction side as when a
1209 pipeline is being built is, if you think of a single construction
1210 spread of somewhere around 30 miles of pipeline, those typically
1211 employ 500 skilled laborers ranging anywhere from equipment
1212 operators to welders to other type of skilled and those are good

1213 paying, you know, jobs with good benefits. The industry itself,
1214 while we have become less employee-intense out in the field, you
1215 know, where we do have field operations again those are good paying
1216 jobs with good benefits.

1217 But as we start building infrastructure, if you are building
1218 a big pipeline, you may have two to three thousand people employed
1219 at any given time working on that pipeline. And then obviously
1220 in the communities where the pipeline is being built, you know,
1221 they are getting the benefit of kind of an uplift of sales of
1222 all the employees in those areas.

1223 Mr. Walberg. It was interesting to see some major
1224 construction of pipelines going through my district, a couple
1225 of large ones, and the numbers of employees, the level of pay
1226 and wages that were there with benefits. And the extent of the
1227 time period that they were employed on those pipelines gave an
1228 encouragement to be able to talk with younger people and say,
1229 if you are looking for a career there are all sorts of options
1230 there. So we want to see that continue.

1231 Thank you, Mr. Chairman. I yield back.

1232 Mr. Peters. Thank you. The chair now recognizes the
1233 gentleman from Massachusetts, Mr. Kennedy, for 5 minutes.

1234 Mr. Kennedy. Thank you, Mr. Chairman. I want to thank
1235 Chairman Rush and Ranking Member Upton for convening this hearing,

1236 and I thank our witnesses for testifying and your presence here.

1237 Today, in the United States, nearly 80 percent of black
1238 Americans live within 30 miles of a coal plant, breathing in toxic
1239 chemicals and living with health consequences of our deference
1240 to fossil fuels. More than 80 percent of Latinos live in American
1241 counties where at least one federal air pollution law has been
1242 violated. In cities across our country, low-income communities
1243 suffer from extreme heat zones and a lack of tree canopy and air
1244 conditioning, raising the risks of asthma and heart disease for
1245 people already living in areas with limited access to quality,
1246 affordable health care.

1247 Now I know we are here today to discuss modernizing the
1248 natural gas infrastructure, but I don't believe we can effectively
1249 do that without acknowledging the fundamental flaws in our
1250 nation's energy policies, because far too often our system rewards
1251 industry interests at the expense of public interest and American
1252 lives. We are well aware of the need for a comprehensive approach
1253 to climate change, but by no means can we simply ignore the climate
1254 risks that we ask ratepayers and communities to continue to pay
1255 for the -- and ask them to continue to pay for the consequences.

1256 So, Commissioner LaFleur, broadly speaking, is FERC required
1257 to consider environmental effects of a proposed infrastructure
1258 project during its public interest consideration?

1259 Ms. LaFleur. Yes, I believe so. First of all, FERC has
1260 to consider the environmental impacts when it does the
1261 environmental review under the National Environmental Policy Act,
1262 but it is also a key part of balancing the cost and benefits to
1263 determine the public interest, and I believe the law already
1264 allows that the public interest can include climate impacts.
1265 That is what the D.C. Circuit said.

1266 Mr. Kennedy. Do you believe that FERC must consider the
1267 environmental impact then when approving a natural gas project,
1268 to be more specific?

1269 Ms. LaFleur. Yes.

1270 Mr. Kennedy. So, I am concerned, Madam Chair. One of your
1271 former colleagues recently wrote in a concurring opinion that
1272 he "respectfully disagrees with the Supreme Court's finding,"
1273 that FERC is required to consider environmental effects during
1274 its approval process. Would you agree with that statement?

1275 Ms. LaFleur. No. Well, I disagree on two counts. First
1276 of all, my reading of the law is that the public interest standard
1277 is robust enough to allow FERC to consider things that were not
1278 known in 1938 like climate impact; other things that were not
1279 known in 1938 are certainly considered.

1280 Mr. Kennedy. Is FERC free to disregard --

1281 Ms. LaFleur. I also don't think FERC can gainsay what the

1282 courts say. Yes. I am sorry.

1283 Mr. Kennedy. No, no. I was interested in understanding
1284 whether that FERC can ignore a Supreme Court finding.

1285 Ms. LaFleur. FERC has to follow what the courts tell it.

1286 Mr. Kennedy. And is that then, if I can ask, given the
1287 articulation of one of your former colleagues, how am I supposed
1288 to interpret that?

1289 Ms. LaFleur. I think he has an honest disagreement of belief
1290 of how he reads the Natural Gas Act, which is why there is a process
1291 for appealing from FERC and courts can tell FERC they did it wrong,
1292 as the Sierra Club case, the Sabal Trail case said, and several
1293 other recent cases.

1294 Mr. Kennedy. Okay, so does the -- excuse me. Does the
1295 Natural Gas Act need to be amended to clarify a public interest
1296 determination to include a consideration of all environmental
1297 impacts including climate change?

1298 Ms. LaFleur. I think that would be an excellent addition
1299 to the law because I think a recent statement of congressional
1300 intent is always extremely valuable. But I think I wouldn't want
1301 anyone to argue if it doesn't pass that that wasn't already in
1302 there, because public interest is a very broad standard.

1303 Mr. Kennedy. Given that it is a broad standard,
1304 Commissioner, that kind of leads to my next question. Climate

1305 change is an issue that has gotten rather politicized over the
1306 course of the past several years given the fact that it is a broad
1307 standard. Do you think specifying and laying out some details
1308 to consider with that standard would be helpful or hurtful?

1309 Ms. LaFleur. Yes. I think the more clarity is there is
1310 less room -- FERC is a creature of statute and the clearer the
1311 statutes are the less room there is for FERC to -- the less wiggle
1312 room to misinterpret the statute.

1313 Mr. Kennedy. And when it comes to the issue of pipeline
1314 siting, do you believe that that issue has become politicized
1315 within the agency?

1316 Ms. LaFleur. I think there has been just a lot of partisan
1317 voting at FERC, unfortunately, over the last several years. I
1318 was a part of that. It takes two sides to be partisan, so I am
1319 not pointing fingers at anyone, but there is just big
1320 disagreements about climate change and the future of the
1321 generation mix and this issue is one of them.

1322 Mr. Kennedy. Ms. Tierney -- and then back to you afterwards,
1323 Commissioner, if I have time. Could FERC adapt and apply a metric
1324 like a social cost of carbon to a significance determination on
1325 greenhouse gas emissions under NEPA?

1326 Ms. Tierney. I certainly think FERC has the authority to
1327 do that. Again, I am not a lawyer, but there are ways to monetize

1328 these impacts on infrastructure, on people and that is what the
1329 social cost of carbon does, so yes.

1330 Mr. Kennedy. And what is impeding FERC from doing so?

1331 Ms. Tierney. Different interpretations about the
1332 importance of doing that.

1333 Mr. Kennedy. Okay, yield back. Thank you.

1334 Mr. Peters. The gentleman's time has expired. The chair
1335 now recognizes the gentleman from West Virginia, Mr. McKinley,
1336 for 5 minutes.

1337 Mr. McKinley. Thank you, Mr. Chairman. West Virginia has
1338 really been impacted in the last few decades with the expiration
1339 -- with the Marcellus, Utica, and eventually the Rogersville,
1340 so we are keen on this what is happening in the Mid-Atlantic area
1341 as we try to get more gas out of the ground and try to move it
1342 around.

1343 So, but what we are concerned about is the infrastructure
1344 and very concerned about the impact this legislation could have
1345 on the infrastructure. Because EIA came out with, they had their
1346 report and one of the items that they brought about their attention
1347 focus was on the cost of the gas to the consumer, which one was,
1348 one of the six major things is the availability and the capacity
1349 of transmission pipelines to move gas, natural gas from producing
1350 areas, storage facilities, and trading hubs to distribution.

1351 We have a problem with this and that here it is in West
1352 Virginia with all that gas, be it we are in the middle of the
1353 run, of the cost across this country in gas rates. So we have
1354 got to find -- if that is accurate, we have got to find a way
1355 to build transmission pipelines. And I am concerned that through
1356 this legislation we are going to see a reduction of that and that
1357 is ultimately going to hurt manufacturing and consumers with it.

1358 I mean there have been billions of dollars invested in the
1359 Mid-Atlantic area, I think. According to my statistics, 124,000
1360 jobs have been created with it. All that investment is also
1361 helping out those counties to help out on schools, first
1362 responders, health care, on and on and on.

1363 So, I am really concerned whether or not this legislation,
1364 the impact it could have on it to slow things down. This is a
1365 chance for an economic recovery in the Mid-Atlantic and the
1366 Appalachian area and we are seeing people try to stop it using,
1367 they are fighting the commerce clause of the Constitution
1368 preventing us from having pipelines across state lines. I think
1369 that ultimately will be played out with it.

1370 So if we are trying to prevent this inhibiting affect that
1371 this legislation have, Mr. McMahon, if I could focus in on you
1372 just a little bit, what is your opinion? Do you think that this
1373 could jeopardize the economic development in the Mid-Atlantic

1374 and those producing areas of the natural gas?

1375 Mr. McMahon. You know, as I said in my opening statement,
1376 the thing that pipelines really need is stability and
1377 predictability, is if we know what the rules are we are going
1378 to abide by the rules. And to get a project built, as you are
1379 aware, it takes time, so it takes about a year before you ever
1380 get to FERC and then the FERC process.

1381 So if midstream the rules change, you might have projects
1382 that are hung up because the rules have changed and they didn't
1383 get -- so that is the reason we keep saying that the Natural Gas
1384 Act has worked well. It is not broken. It doesn't preclude as
1385 the courts are telling us what we should and shouldn't do, certain
1386 reviews. I think that the more restrictive you make it, the more
1387 concern you rightfully have that it is going to inhibit or slow
1388 down the buildout of necessary infrastructure.

1389 Mr. McKinley. Let me build up a little bit. I am going
1390 to switch gears with you just a little bit, because in the
1391 Mid-Atlantic area and this Appalachian and West Virginia area,
1392 we have been producing quite a bit of natural gas liquids, ethane
1393 and the like.

1394 The question here would be if these are the feedstocks for
1395 petrochemical manufacturing and could diversify the economy in
1396 West Virginia, eastern Ohio, parts of Pennsylvania and Virginia,

1397 if we could have a storage hub of these products there so that
1398 a secondary hub that we have comparable to what is going on in
1399 the Houston market, so instead of the liability, the exposure
1400 we have of that storage hub with these ethane storage in West
1401 Virginia, do you have an opinion about that, about the possibility
1402 of having a second petrochemical, not competing, but just a
1403 secondary hub?

1404 Mr. McMahon. Well, on the liquid side that is kind of
1405 outside INGA's kind of bailiwick since we are kind of natural
1406 gas transmission operators. But, you know, the development of
1407 hubs and pricing centers for either natural gas or natural gas
1408 liquids, I think, is beneficial to the entirety of the industry.

1409 Mr. McKinley. Okay. Mr. Chairman, I yield back the balance
1410 of my time.

1411 Mr. Peters. Thank you. The chair now recognizes the
1412 gentleman from Pennsylvania, Mr. Doyle, for 5 minutes.

1413 Mr. Doyle. Thank you, Mr. Chairman. I want to thank the
1414 chair and Ranking Member Upton for holding this hearing.

1415 Natural gas is a vital fuel for our economy. It is essential
1416 to keeping the lights on all over the country and in western
1417 Pennsylvania it has been a tremendous economic driver providing
1418 good paying jobs and cheap energy that helps businesses grow.

1419 It also has helped lower carbon emissions from the power sector

1420 as it has replaced coal as the main power source in many parts
1421 of the country.

1422 Unlike in western Pennsylvania, most places do not have
1423 abundant natural gas reserves. They need pipelines to get the
1424 gas and the buildout of pipeline infrastructure is vital to
1425 providing cheap natural gas around the country. However, we must
1426 make sure that we strike the right balance between developing
1427 this vital infrastructure and ensuring that landowner rights are
1428 not being trampled and that we are accounting for climate change
1429 and that ratepayers are not being overcharged.

1430 Mr. Worsinger, you mention that 95 percent of APGA members
1431 are captive to a single interstate natural gas pipeline. How
1432 does this weigh on a natural gas customer's decision to file a
1433 Section 5 complaint against the one pipeline it needs to get its
1434 gas from?

1435 Mr. Worsinger. The cost to bring forth a Section 5 filing
1436 is very expensive, something that most of APGA's members would
1437 not be able to afford. It would far exceed, probably, their cost,
1438 annual gas transmission cost for a couple of years, so it is not
1439 likely that they would do that. But let me just add, we
1440 support the construction of the Atlantic Coast pipeline. That
1441 is going to bring the gas from your area down to our area in eastern
1442 North Carolina where we desperately need it. One of the other

1443 congressmen mentioned about having a float glass plant in his
1444 area. There was one that was considering eastern North Carolina.
1445 Unfortunately, we did not have the natural gas capacity for that
1446 plant and that plant ended up being constructed in Canada. We
1447 need these pipelines for that.

1448 Mr. Doyle. Thank you.

1449 Commissioner LaFleur, if Congress were to reform the Natural
1450 Gas Act to include refund authority, do we also need to look at
1451 conforming changes to Section 4 of the Natural Gas Act and do
1452 you believe that giving FERC refund authority alone would suppress
1453 the incentive to build the needed pipelines?

1454 Ms. LaFleur. I am not aware of any mirroring changes that
1455 need to be made in Section 4, because there already is a robust
1456 refund authority. And I don't believe on the electric side in
1457 Section 206 where there has been refund authority for a long time
1458 that has suppressed the development of the transmission industry.

1459 I think as Mr. McMahon has testified a lot of customers are on
1460 negotiated rates. It would clearly have an impact, but it would
1461 be a new secure, stable regime, different one than they have now.

1462 Mr. Doyle. Thank you.

1463 Dr. Tierney, could you provide us some more detail on what
1464 you believe FERC should consider? You said in your written
1465 testimony FERC should expand its determination of significant

1466 versus nonsignificant impacts and broaden its definition and
1467 consideration of project alternatives while doing its NEPA
1468 assessments. Can you just expand on that a little bit?

1469 Ms. Tierney. Sure, I would be happy to. I would just focus
1470 on two things. One of them is that FERC does not spend sufficient
1471 attention on no pipeline alternatives -- excuse me, a no -- excuse
1472 me, I am really sorry -- no pipeline as an alternative to the
1473 proposed pipeline. I really apologize. And as Commissioner
1474 LaFleur said, there are instances where there is underutilized
1475 capacity in a region that could be taken advantage of, and as
1476 you said in a balancing test of whether or not you actually could
1477 use today's infrastructure without the environmental impacts that
1478 would be a great thing that FERC could do. Let me stop there
1479 because I know you have limited time.

1480 Mr. Doyle. Yes.

1481 Mr. Chairman, I thank you, and I will yield back.

1482 Mr. Peters. The gentleman yields and the chair now
1483 recognizes the gentleman from Virginia, Mr. Griffith, for 5
1484 minutes.

1485 Mr. Griffith. Thank you very much, Mr. Chairman. What I
1486 would like to do, first, is ask for unanimous consent to submit
1487 a letter for the record from Mrs. Irene Leach of Elliston, Virginia
1488 that was sent yesterday to the chairman and the ranking member

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

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1489 of this committee and subcommittee.

1490 Mr. Peters. Without objection, so ordered.

1491 [The information follows:]

1492

1493 *****COMMITTEE INSERT*****

1494 Mr. Griffith. All right, I appreciate that. In that
1495 letter, Mrs. Leech, who I have known for many years, expresses
1496 frustration about landowner rights, and because co-location
1497 wasn't looked at and maybe it wouldn't have helped her on one
1498 of them, but she currently lives in the pathway or near the pathway
1499 of the Mountain Valley pipeline with a family farm that has been
1500 in the family for over 100 years in the pathway of the Atlantic
1501 Coast pipeline.

1502 And this is a problem, and she extols, I encourage you all
1503 to read the letter. She extols the problems that her family has
1504 had and their concerns. On top of that I have heard from numerous
1505 constituents. But, most importantly, and refresh the
1506 committee's mind, they have heard this before and, Ms. LaFleur,
1507 you have probably heard it before too. But when Mountain Valley
1508 first came to the area, I learned about it when a member of the
1509 board of supervisors in one of the affected counties called me
1510 and said, "Morgan, there are surveyors all over the county saying
1511 that there is some kind of gas pipeline coming through, what do
1512 you know?"

1513 The local folks didn't know anything. I didn't know
1514 anything. This has got to change. Landowners rights have to
1515 be respected. And, accordingly, I will tell you that, you know,
1516 this brought a number of us together. After not receiving an

1517 additional hearing, FERC turned us down for an additional hearing,
1518 I sent it to the chairman. Ms. LaFleur, you were not chairman
1519 at that time, but I sent several requests to the chairman along
1520 with then-Congressmen Goodlatte and Hurt, to do an additional
1521 hearing. Not to change the decision, per se, but the landowners
1522 felt they weren't being heard. One additional hearing in
1523 Virginia, two would have been great, but we would have accepted
1524 one. We got nothing.

1525 So, when you can't go to your local officials, you can't
1526 go to your state officials and you can't go to your federal
1527 officials and feel like you are ever being heard, reforms do need
1528 to happen. Accordingly, Tim Kaine and I introduced similar, not
1529 identical, but similar legislation in the House and the Senate.

1530 Whenever you can bring Tim Kaine from his side of the political
1531 spectrum and Morgan Griffith from my side of the political
1532 spectrum together you have done something. I am not sure it is
1533 a good something, but you have done something.

1534 And my bill is H.R. 173 and it amends the Natural Gas Act
1535 to create greater transparency and additional public input. It
1536 requires FERC to hold public meetings in each county in which
1537 the project will be located and restates U.S. federal policy that
1538 the taking of property through eminent domain be limited in
1539 situations in which the taking is for public, not private use

1540 which is modeled after a George W. Bush executive order. It also
1541 requires the taking of land under a conservation easement be given
1542 compensation for the lost conservation value of the land.

1543 Mr. McMahon, last week FERC announced a reorganization and
1544 a new division dedicated to addressing landowner issues.
1545 Obviously, they have started to hear after 5 or 6 years of
1546 haranguing. Do you support FERC's actions to process filings
1547 by affected landowners more quickly?

1548 Mr. McMahon. I do.

1549 Mr. Griffith. And you want it to be simpler, correct?

1550 Mr. McMahon. Yes. I think that it is a good thing that
1551 they address those issues quicker. I think where it gets complex
1552 is, you know, from going back to my predictability and stability
1553 is if you have got landowner issues that are getting resolved
1554 before the environmental issues, you still don't know what the
1555 final outcome is going to be unless they are both kind of done
1556 on the same course.

1557 Mr. Griffith. And I appreciate that. I mean, clearly,
1558 landowners need to feel like they are at least being heard and
1559 some of their concerns are being addressed. And when you get
1560 a blank stare or no answer for a long period of time that does
1561 not help the landowner.

1562 Are there other steps that FERC or Congress could take to

1563 improve the process to further address landowner concerns? And
1564 I will raise that for anybody who wants to address it. I will
1565 start with you, Mr. McMahon, and then Ms. LaFleur.

1566 Mr. McMahon. Yes. I think one of the things is the industry
1567 is evolving and we still have to get better. There is no -- we
1568 can't say anything but that. But what we are trying to do is,
1569 the last thing I know from our perspective is somebody like you
1570 hearing about it, a project, for the first time from somebody
1571 other than us, that is one of the big changes we are trying to
1572 make is get more transparent with local and state officials.

1573 Mr. Griffith. I am going to switch gears because I have
1574 just got a little bit of time.

1575 Ms. LaFleur, at some point we have to decide, if we are going
1576 to do co-location, we have to decide who makes that decision.

1577 Does that belong to FERC or does that belong to somebody else?

1578 Ms. LaFleur. I think it belongs to FERC under the Natural
1579 Gas Act. And I dissented on the Mountain Valley and ACP pipelines
1580 because they were so close in route. I think the step FERC took
1581 last week is a good step, assuming they follow through. It
1582 basically just does the rehearings faster so landowners can
1583 appeal, but I think there is a lot more that has to be done to
1584 make sure that the construction permits and eminent domain is
1585 sequenced to protect the landowner rights.

1586 Mr. Peters. The gentleman's time has expired.

1587 Mr. Griffith. I yield back.

1588 Mr. Peters. The chair now recognizes the gentleman from
1589 Maryland, Mr. Sarbanes, for 5 minutes.

1590 Mr. Sarbanes. Thank you, Mr. Chairman. Thank you to the
1591 panel. I want to ask some questions about Section 401 of the
1592 Clean Water Act which empowers states and authorized tribes to
1593 issue water quality certifications that must be included within
1594 certain federal permits and licenses like natural gas pipeline
1595 projects. As you know, the Supreme Court upheld that this power
1596 is "essential" in the scheme to preserve state authority to
1597 address the broad range of pollution that threatens our nation's
1598 waters.

1599 Commissioner LaFleur, do you think Section 401 is an
1600 important part of the pipeline permitting process?

1601 Ms. LaFleur. Yes. When FERC issues a certificate there
1602 is usually numerous conditions that are attached to what the
1603 pipeline has to do and one of them is to get state water quality,
1604 almost always in either a hydro or a pipeline case there is almost
1605 always a state water quality certificate required.

1606 Mr. Sarbanes. Thank you.

1607 Ms. LaFleur. Sometimes numerous.

1608 Mr. Sarbanes. Right, and that is very important. In the

1609 recent Hoopa Valley case, the D.C. Circuit struck down the common
1610 industry practice of withdrawing/resubmit, which is a method used
1611 to annually reset the 1-year time period for states to act. The
1612 case didn't delve into the scope of states' conditioning
1613 authority, but it did interpret a 1-year maximum time period for
1614 a state to decide on water quality certification application.

1615 Again, Commissioner LaFleur, while the court case concerned
1616 a hydroelectric project, do you think the Hoopa Valley decision
1617 has implications on gas pipelines as well?

1618 Ms. LaFleur. Yes. After the Hoopa Valley case which found
1619 that FERC was arbitrary and capricious for not finding a waiver
1620 in that case, FERC unanimously, all four commissioners, rule that
1621 the State of New York had waived its authority in the constitution
1622 pipeline. And we looked closely, I looked closely at Hoopa Valley
1623 to find a loophole that we wouldn't have to say that New York
1624 waive, but the court was pretty clear that that 1-year filing
1625 and refiling was not kosher.

1626 Mr. Sarbanes. Yes. I have some concerns about where that
1627 leaves us, because in addition to the Hoopla Valley decision EPA
1628 has proposed a rule that would severely limit the authority of
1629 states to issue water quality certifications that protect their
1630 local water quality. It limits a state's ability to place
1631 conditions on a permit, to protect their resources and narrowly

1632 interprets that 1-year time period in which states are required
1633 to act. It is kind of putting like a straitjacket on the process
1634 you would want to see for kind of thoughtful review and input
1635 at the state level. So now if a state exceeds its time period
1636 without making a decision, the state would waive the authority
1637 it had under Section 401, and that is an interpretation that
1638 completely ignores common instances where states need more
1639 information to make an informed and thoughtful decision.

1640 Do you have any concerns with EPA's proposed changes to the
1641 Section 401 authorities and is more likely or is the potential
1642 that this restrictive interpretation of a 1-year time period could
1643 result in states denying certifications in an attempt to avoid
1644 accidentally waiving their Section 401 authority? In other
1645 words, there is kind of a catch-22 potential here.

1646 Ms. LaFleur. Yes, I am not a big expert on the Clean Water
1647 Act, but I am concerned that the new EPA proposal really is
1648 inconsistent with the whole spirit of the Clean Water Act and
1649 I just think it is a further example of how divided and polarized
1650 everything is. The states feel powerless to stop these pipelines
1651 that are coming through so they are using their 401 authority,
1652 and then EPA is maybe overreacting by really cutting back the
1653 whole 401, not just stopping pipelines that will really hurt
1654 states' legitimate water interests, which is, you know, an

1655 overreaction maybe to an overreaction.

1656 And yes, I do think states are going to say no because they
1657 don't want to be caught in the 1-year rule, so as the year is
1658 ending they are going to say no and maybe pipelines that are needed
1659 won't get built because states will say no because they have to
1660 say no. So I think a little more moderate balanced approach would
1661 be better than we are now.

1662 Mr. Sarbanes. I appreciate that. And, you know, Maryland
1663 is experiencing this in one situation in particular. And, you
1664 know, that Section 401 authority, I mean it is there for a reason,
1665 but it can only be meaningful for states in terms of protecting
1666 their water resources if there is some careful balance struck
1667 here and I do have concerns that it is not happening. We want
1668 our federal agencies to work cooperatively with states and tribes,
1669 implement and enforce science-based water quality standards, and
1670 not impede their ability to fulfill those obligations under the
1671 Clean Water Act.

1672 So it is an important issue, one we will continue to bring
1673 attention to, and I thank you for your testimony and I yield back.

1674 Mr. Peters. The chair now recognizes the gentleman from
1675 Texas, Mr. Flores, for 5 minutes.

1676 Mr. Flores. Thank you, Mr. Chairman.

1677 Mr. McMahon, thank you for being here and thank all the panel

1678 for being here today. I would like to talk about the impact of
1679 natural gas and its prices on electricity rates across the
1680 country. Data from the Energy Information Administration shows
1681 that residential consumers in my home state pay about 12 cents
1682 per kilowatt-hour as of November 2019, while in the same
1683 timeframe, residential consumers in the New England states had
1684 almost double the rate at 21 cents per kilowatt-hour. The
1685 abundant network for natural gas-fired electricity contributes
1686 significantly to our low electricity, or our attractive
1687 electricity rates, while thinner availability of pipeline
1688 networks of natural gas in the Northeast is contributing to higher
1689 prices for consumers. Mr. McMahon, you mentioned in your
1690 testimony that amendments to Section 5 of the Natural Gas Act
1691 could impact a pipeline's ability to modernize and expand its
1692 infrastructure. Can you drill into that a little bit for us?

1693 Mr. McMahon. Yes. It goes back to what I have said earlier
1694 about being predictable and stable, is making a retroactive refund
1695 on something where you have been following the rules, so a pipeline
1696 is charging its just and reasonable rate it has been charging
1697 and somebody complains, all of a sudden you have to go back from
1698 the date that the rate is found to be unjust and reasonable and
1699 refund dollars that you really had no control over because you
1700 were following the rules. It creates uncertainty, and any time

1701 you create uncertainty in today's financial markets it can affect
1702 your cost of capital. So if a lender or others are seeing that
1703 rates become more unstable, more uncertain, revenue streams
1704 become more uncertain, it is going to affect your cost of capital,
1705 and if those costs go up it may affect your investment decision
1706 on marginal or not as good of projects.

1707 Mr. Flores. Does reduced access to pipeline infrastructure
1708 adversely impact the electricity rates?

1709 Mr. McMahon. Yes.

1710 Mr. Flores. Okay. And so if pipeline infrastructure is
1711 being blocked for some reason in a particular geographic area,
1712 where do those states, where do those areas, those consumers get
1713 their energy?

1714 Mr. McMahon. On the electric side, Congressman, I am not
1715 really good on how the, you know, electrons flow, but, you know,
1716 I think what you are seeing is the constraints that are in the
1717 Northeast is the pipeline capacity that exists has become very
1718 valuable and very constrained.

1719 Mr. Flores. Right.

1720 Mr. McMahon. And so, until those constraints are relieved
1721 then the electric industry is going to have to move electrons
1722 around to meet those needs.

1723 Mr. Flores. And so homes have to use heating oil to heat

1724 their homes, electricity is obtained legacy coal-fired plants,
1725 all of which contribute to higher prices for those consumers and
1726 which contribute to higher carbon emissions to the environment.

1727 So I appreciate the panel being here, thank you. I yield back
1728 the balance of my time.

1729 Mr. Peters. The gentleman yields. The chair now
1730 recognizes the gentleman from Texas, Mr. Veasey, for 5 minutes.

1731 Mr. Veasey. Thank you very much, Mr. Chair. I wanted to
1732 ask Commissioner LaFleur a question. In your testimony you
1733 discussed the evolution of the Natural Gas Act to reflect our
1734 nation's changing energy priorities. Specifically, you
1735 mentioned the notice of inquiry FERC opened to take a
1736 comprehensive look at the pipeline process. You wrote that the
1737 development of a better process, ideally through a bipartisan
1738 consensus order, would be a more fair, clear, and efficient one
1739 than the one handed to FERC through court orders.

1740 Can you speak a little bit more about what that new process
1741 might look like? And I would also like for Ms. Tierney to answer
1742 that as well.

1743 Ms. LaFleur. Well, thank you for the question. As Dr.
1744 Tierney said, FERC has received literally thousands of comments
1745 in that docket. And I think if FERC -- FERC would have to look
1746 at the several areas that are covered in the notice of inquiry;

1747 how it looks at need; how it does its environmental review and
1748 how it does landowner rights; how it does the balancing test.

1749 I think in each one, FERC would have to come up with -- we
1750 couldn't just say, oh, we will consider it all, put it in a big
1751 stew pot and we will come up with public interest. That wouldn't
1752 give anyone any certainty or predictability and FERC would have
1753 to come up with new standards. For example, if you are looking
1754 at need, one thing I have said is if a state regulator said the
1755 pipeline is needed to serve customers, that carries a lot of weight
1756 with me as opposed to just like we are bringing it to market and
1757 we will see who wants it. So, look at the different types
1758 of, you know, look at the different cases that have come in and
1759 set new standards, but that is what FERC does. FERC has developed
1760 new policies on all kinds of things as the nation's energy system
1761 evolved. And similarly, with environmental, you would look
1762 at, okay, if we are going to look at greenhouse gases, what kind
1763 of information -- one of things FERC would really have to look
1764 at is what do we ask pipelines to come in with? Now we just ask
1765 them, come in with your route, come in with your construction
1766 plans, et cetera, come in with your who has the precedent
1767 agreements.

1768 FERC would have to ask, what do you know about what the end
1769 uses are going to be? How long will they be there for? Then

1770 you could ask the state, how long do you think you will be burning
1771 gas or whatever? They would have to come up with new rules, not
1772 something that they would just do casually, but I think it within
1773 the authority and within the competency of the agency.

1774 Mr. Veasey. Yes, thank you.

1775 Ms. Tierney?

1776 Ms. Tierney. I would say just what she said. I would very
1777 much agree with that and I would just make one more suggestion.

1778 Right now, FERC adopts, in many cases provides a very thorough
1779 record. Not complete, but thorough record on environmental
1780 impacts, but does not bring that into its review of whether a
1781 project is needed and whether it is needed in light of state
1782 policies that would call for a reduction in greenhouse gas
1783 emissions over time.

1784 So, right now, the 1999 policy statement identifies that
1785 FERC will look at all relevant factors, but FERC is not doing
1786 that. So even going back to the actual letter of the original
1787 statement in 1999 would be better than today, because today the
1788 box is checked if you have a precedent agreement and that is not
1789 consistent with the public interest test.

1790 Mr. Veasey. Yes, good.

1791 Commissioner, what role do you think that FERC should play
1792 in the public understanding exactly how the pipeline process works

1793 and the everyday role that pipelines play in our lives? And what
1794 I mean by that is, obviously, the groups that come up here are
1795 very well-funded, whether they are from the fossil fuel industry
1796 or whether they are from consumer groups. They know what they
1797 are talking about. They understand exactly the role that
1798 pipelines play. But just the everyday person out there, whether
1799 it is, you know, this time of year particularly, you know, where
1800 you are going to get your natural gas from or how you are going
1801 to heat your home, the expansion of manufacturing in this company,
1802 climate change, all of those different things that these groups
1803 that are well-organized know about, but I really don't think that
1804 the average person really understands that well, and what role
1805 do you think the agency should play in really helping educate
1806 the American public?

1807 Ms. LaFleur. I think that -- I think, and this is something
1808 I have thought a bit about, FERC should put more effort into making
1809 it easier for members of the public to participate in its cases
1810 potentially through more technology, through a more user-friendly
1811 website, or other ways that people who are like Representative
1812 Griffith's constituents who are directly impacted by something
1813 can come into FERC more easily. FERC has worked on that, but
1814 there is still a ways to go.

1815 As far as general education, I think FERC has a role. I

1816 think state commissions have a role. Often, the people who care
1817 the most are either the ones who are building the pipeline or
1818 the ones who it is going through their farm. But what about the
1819 people on the end that need the gas to heat their schools?
1820 Sometimes they are not in the docket anywhere. And I think those
1821 people need to be informed through FERC, through their state
1822 agencies, and through the industry of, you know, what the
1823 interests are.

1824 Mr. Peters. The gentleman's time has expired. The chair
1825 now recognizes the gentlewoman from Washington, Mrs. McMorris
1826 Rodgers, for 5 minutes.

1827 Mrs. McMorris Rodgers. Thank you, Mr. Chairman. I
1828 appreciate everyone being here today. The shale revolution over
1829 the past decade has made the United States the global leader in
1830 natural gas production. It is striking to me, when I was first
1831 elected to Congress there was a lot of concern about the rising
1832 cost of natural gas and our dependence upon other countries for
1833 a natural gas supply and today we are one of the largest exporters
1834 of natural gas in the world.

1835 This renaissance of natural gas production has created
1836 hundreds of thousands of jobs, decreased prices of energy and
1837 home heating, increased American energy independence, and reduced
1838 emissions. We should all be proud of this responsible and

1839 innovative use of our natural resources. As countries like China
1840 and Russia seek to use their energy resources to pressure other
1841 countries, America must counter their influence with our natural
1842 gas exports. China is building hundreds of coal-fired plants
1843 in developing nations as part of their Belt and Road Initiative.
1844 Russia continues to use their natural gas, which is almost 50
1845 percent higher in lifecycle greenhouse gas emissions, to
1846 influence European countries.

1847 If we expand our LNG infrastructure, EIA estimates our
1848 exports can more than double by 2050. By replacing these coal
1849 plants in Asia, our LNG can reduce GHG emissions by up to 54
1850 percent. Calls to ban fracking, block pipelines, and reduce our
1851 natural gas exports will result in the loss of hundreds of
1852 thousands of jobs, increased energy prices, increased emissions,
1853 and the spread of authoritarian influence globally. Instead,
1854 we should be focusing on continuing to modernize and build our
1855 infrastructure so that we can meet the world's growing demand
1856 for our clean natural gas.

1857 Mr. McMahon, the U.S. has, arguably, the most highly
1858 developed and technologically advanced pipeline network in the
1859 world. Combined with our tremendous shale resources, do you
1860 believe the U.S. has the global energy advantage when it comes
1861 to price and supply of natural gas?

1862 Mr. McMahon. I do.

1863 Mrs. McMorris Rodgers. And as a follow-up, how have
1864 pipeline and LNG exports helped our trading partners reduce their
1865 carbon emissions?

1866 Mr. McMahon. Well, as the pipeline industry has built out
1867 the infrastructure, the LNG facilities, a lot of them which were
1868 originally designed to be import terminals are now exporting
1869 cargoes. So providing LNG to the world, it is allowing us to
1870 put our natural gas at work in other parts of the country, or
1871 I should say the world, where they are burning, you know, coal,
1872 fuel oil, and other things. So I think it has been a very big
1873 boon to us to be able to export clean energy to the world.

1874 Mrs. McMorris Rodgers. Well, and as I mentioned earlier,
1875 I believe that we need to be expanding our LNG infrastructure
1876 to increase exports to markets such as Asia. FERC is the lead
1877 agency for siting interstate natural gas pipelines and many state
1878 and federal agencies have a role to play. They may review aspects
1879 of an application or they may be required to issue separate
1880 permits.

1881 To Mr. McMahon again, are you concerned that some states
1882 are using their permitting authority to block pipelines for
1883 political reasons?

1884 Mr. McMahon. What I will say is that over the last 5 or

1885 6 years, we see it becoming increasingly more difficult to build
1886 pipelines in certain areas by inability to obtain the necessary
1887 permits.

1888 Mrs. McMorris Rodgers. So what suggestions do you have to
1889 improve the coordination for quicker decisions?

1890 Mr. McMahon. Well, I think that it is kind of twofold is
1891 the pipelines we typically build are those in interstate commerce
1892 and those are crossing multiple state lines. The idea is that
1893 the Commission has found that the pipeline is in the public
1894 convenience and necessity and it needs to be in interstate
1895 commerce. And it becomes very frustrating and it kind of goes
1896 back to my stability and predictability is if you are getting
1897 all the way out and you hit a roadblock because a state is holding
1898 up permits or refusing to issue or denying permits then, you know,
1899 you may getting to where the gas is actually very much needed,
1900 but it is blocked.

1901 Mrs. McMorris Rodgers. Right, right. And, unfortunately,
1902 that is happening too much today.

1903 Mr. McMahon. It is happening more than it ever has in my
1904 career.

1905 Mrs. McMorris Rodgers. Well. Well, our pipeline
1906 infrastructure has been so important not just to Americans but
1907 also to the rest of the world, so I appreciate everyone being

1908 here and appreciate the hearing today. I will yield back.

1909 Mr. Rush. The gentlelady yields back. The chair now
1910 recognizes himself now for 5 minutes for the purposes of an opening
1911 -- for questioning the witnesses.

1912 Ms. Tierney, hi.

1913 Beg your pardon?

1914 Ms. Tierney. Good morning, Mr. Chair.

1915 Mr. Rush. Good morning. Good morning. As part of its
1916 public interest review, FERC relies on precedent agreements to
1917 determine pipeline need during the application review process.

1918 Do you think that this is sufficient to determine pipeline need,
1919 and what other factors should be included?

1920 Ms. Tierney. Thank you for that question. I certainly
1921 think that it is relevant to know in a FERC review of whether
1922 or not a pipeline is needed to see if there is a precedent
1923 agreement. It is potentially very relevant as part of many
1924 different things that FERC should take into account.

1925 The other kinds of things are in the market for where there
1926 is demand for natural gas, is that market located in a state where
1927 the state has adopted a policy to eliminate fossil fuel over time
1928 in that market? FERC might be interested to know whether there
1929 would be stranded costs of a pipeline in that circumstance and
1930 whether or not it would be a bad idea to allow yet another pipeline

1931 into a region.

1932 So demand is one thing, environmental and other state
1933 economic development policies, a variety of things; those things
1934 could support need for a project or be against the need for a
1935 project in light of other pipelines that are already serving a
1936 region.

1937 Mr. Rush. There is a small municipality, very small, in
1938 Illinois. It is a town called Pembroke, Illinois.

1939 Ms. Tierney. Okay.

1940 Mr. Rush. In Pembroke, Illinois there are, I am not sure
1941 what the population is, but they have no access to natural gas
1942 at all and Reverend Jesse Jackson, Sr., is really making that
1943 a public issue because the people are existing without any of
1944 the things that we take for granted.

1945 And I think, does FERC assess are there citizens across the
1946 nation who may be dwelling in places, cities and that how they
1947 are still in the Dark Ages as it relates to pipeline and access
1948 to modern conveniences such as pipelines?

1949 Ms. Tierney. I do think that FERC could take into
1950 consideration what is going on in a particular part. I am
1951 assuming this is in the metropolitan area of Illinois?

1952 Mr. Rush. No, it is not.

1953 Ms. Tierney. It is not, okay.

1954 Mr. Rush. It is in the rural area.

1955 Ms. Tierney. Okay.

1956 Mr. Rush. So my point is that we hear about, we have a lot
1957 of discussions about deserts.

1958 Ms. Tierney. Yes.

1959 Mr. Rush. Is there a pipeline desert in the U.S.?

1960 Ms. Tierney. This is true. And FERC will --

1961 Mr. Rush. Is there one? Is there a pipeline desert or a
1962 natural gas desert in the U.S.?

1963 Ms. Tierney. I think there are probably parts of the U.S.
1964 where there is insufficient access to natural gas.

1965 Mr. Rush. Yes.

1966 Ms. LaFleur. There are places especially in, I think,
1967 pieces of New England, parts of the upper Midwest that use propane
1968 delivered by truck because they don't have access to natural gas.
1969 Mostly little communities, kind of on the edges of metropolitan
1970 areas.

1971 Ms. Tierney. And I would add tribal reservations are an
1972 example where they are deserts.

1973 Mr. Rush. So my question to you is, are we satisfied with
1974 that, with that state for American citizens in the 21st century?
1975 Are we satisfied with that?

1976 Ms. Tierney. Well, I would assume that there are economic

1977 considerations that in which a pipeline company determined that
1978 it was too costly to build infrastructure to serve that
1979 low-density area. I am not saying that is good or bad, but that
1980 is the system that we have.

1981 Mr. Rush. And it is not the demand, and I want to say it
1982 is insufficient. It is a travesty.

1983 Ms. Tierney. Thank you.

1984 Mr. Rush. Because we have -- this is the wealthiest nation
1985 in the history of the world, and the pipe, you know, we want to
1986 argue and make a point that we are energy sufficient or that we
1987 export energy and we have American citizens who don't have access.

1988 Ms. Tierney. Thank you.

1989 Mr. Rush. Thank you.

1990 The chair now recognizes Mr. Johnson for 5 minutes.

1991 Mr. Johnson. Thank you, Mr. Chairman. I am really glad
1992 that we are taking up this issue because it is extremely important
1993 to the people that I represent in oil and gas country in eastern
1994 and southeastern Ohio. You know, we sit on top of the Utica and
1995 Marcellus natural gas deposits and over the last few years we
1996 have seen the incredible economic and geopolitical advantages
1997 that oil and gas activity is bringing to the United States. And
1998 today's hearing gives us a good opportunity to get into the weeds
1999 and hear from some of our experts on how we can responsibly get

2000 natural gas to the customer without compromising all the benefits
2001 that we are seeing from this abundance.

2002 So, Mr. McMahon, you know, we all know low- and middle-income
2003 households spend a larger share of their income on energy bills,
2004 so lower natural gas prices really help. In addition, in my
2005 district we have seen growth and indirect employment surrounding
2006 new oil and gas development. Can you talk about the benefits
2007 that the average person sees, the person on the street, the person
2008 in the hills and valleys of eastern and southeastern Ohio,
2009 particularly those who may not benefit from direct employment
2010 in the energy industry?

2011 Mr. McMahon. Well, it kind of goes back to one of the big
2012 advantages is the availability now of natural gas. When I entered
2013 the industry there was concerns about shortages and where the
2014 gas was going to actually come from. Now we have abundant natural
2015 gas. People have been able to enjoy low gas prices. It is also,
2016 as I have said earlier, had a manufacturing renaissance and a
2017 lot of the products that, you know, are used in everyday use such
2018 as some of the plastics and things like that, that, you know,
2019 everybody is buying are now becoming cheaper because they are
2020 being produced domestically.

2021 They are being produced with low priced natural gas which
2022 has driven down some of the normal products that people would

2023 use. So even though they may not be employed or having direct
2024 benefit, the indirect benefits from lower utility bills, lower
2025 consumer prices on things that used to be manufactured abroad
2026 or used, based on NAFTA or something else are now being able to
2027 be used by low priced natural gas.

2028 Mr. Johnson. Yes. And, you know, I have been saying for
2029 quite a while to people in my district that, you know, they have
2030 seen promises of economic booms around energy for a long, long
2031 time. I mean Ohio has been in the oil and gas business for many,
2032 many years. In fact, the first oil well drilled on the North
2033 American continent sits just off of Exit 25 from Interstate 77
2034 in Caldwell, right in the heart of my district.

2035 And I have shared with folks that take for example, you know,
2036 we have an ethane cracker plant that is going in across the river
2037 in Manaca, Pennsylvania. We have got another one in Belmont
2038 County that we are sitting on pins and needles waiting for the
2039 final investment decision and it looks like everything is moving
2040 in the right direction. It has been my contention that these
2041 are just the tips of the iceberg that in addition to low energy
2042 prices that natural gas brings, those that aren't employed in
2043 the energy sector will also benefit from the economic
2044 opportunities that are coming with these big petrochemical
2045 facilities, because when the textile manufacturers and the

2046 plastic manufacturers and others that use the ethylene and
2047 polyethylene and polypropylene that will be coming out of those
2048 facilities for manufacturing, I think our region is going to be
2049 flooded with businesses that want to come and set up their
2050 operations there. Am I wrong?

2051 Mr. McMahon. No, I think what you are seeing is, you have
2052 seen the renaissance especially along the Gulf Coast. I mean
2053 if you look at what has happened in Lake Charles and along the
2054 river corridor in New Orleans, Baton Rouge, you are now seeing
2055 in the Pennsylvania, Ohio, West Virginia area where things were
2056 historically just done along the Gulf Coast have now moved to
2057 the upper Midwest. And I think that, you know, the Gulf Coast
2058 has benefited for years, I think as you are seeing now, the upper
2059 Midwest is going to benefit equally.

2060 Mr. Johnson. Watch out, New Orleans. Here we come. I
2061 yield back. Thank you.

2062 Mr. Rush. The gentleman yields back. The chair now
2063 recognizes Ms. Barragan for 5 minutes.

2064 Ms. Barragan. Thank you. I want to thank the panelists
2065 for being here today and talking about this issue. Climate change
2066 is an issue that has been very important to me.

2067 I want to do a little survey. Can you raise your hand on
2068 the panel if you agree with the scientific consensus that climate

2069 change is primarily driven by human activity? Okay, we have got
2070 three. Now let's -- I am going to ask the three of you to keep
2071 your hands up, if you believe that the FERC should use NEPA or
2072 the National Environmental Policy Act to analyze the climate
2073 impacts of pipeline projects as part of its determination of
2074 whether a project is or is not in the public interest. Keep your
2075 hands up.

2076 Okay, so now we have -- we still have three of four. In
2077 my view, I think it is basic common sense that at a minimum if
2078 we want to reduce climate emissions, we need to evaluate further
2079 infrastructure projects for their climate impact, otherwise I
2080 think we are flying blind.

2081 Ms. LaFleur, can you please explain why evaluating climate
2082 impacts is common sense and how we can ensure FERC does climate
2083 impact analysis?

2084 Ms. LaFleur. Well, the National Environmental Policy Act
2085 requires FERC, because FERC is the lead agency for pipelines,
2086 to look at direct, indirect, cumulative environmental impacts,
2087 and it is clear to me, and the courts have said, that climate
2088 impacts whether it is from methane emissions from the pipelines
2089 or downstream emissions are an impact of the pipeline so it has
2090 to be evaluated and disclosed as part of NEPA.

2091 I also believe that as part of public interest that has to

2092 be weighed, weighed with some of the benefits of pipelines we
2093 have heard about and has to be weighed and balanced. How we can
2094 make FERC do it, I think either a court order or legislation is
2095 the only way to make FERC do it or a different set of commissioners
2096 on FERC over time. I don't think FERC is inclined to do it right
2097 now and that is the honest belief of the commissioner that are
2098 making those decisions.

2099 Ms. Barragan. All right, thank you.

2100 Dr. Tierney, the Trump administration's recent proposed rule
2101 to gut NEPA includes a provision that says the analysis of
2102 cumulative effects is not required. Would this proposed
2103 regulatory language direct agencies not to consider climate
2104 change when reviewing gas pipelines?

2105 Ms. Tierney. I would interpret that, as a former
2106 administrative official I would interpret that as a direction,
2107 but it would certainly provide an excuse for any agency that didn't
2108 want to move in that direction as well.

2109 Ms. Barragan. Taking it one step further, would removing
2110 the consideration of cumulative effects also mean that an agency
2111 reviewing the impact of a proposed gas pipeline through a
2112 community of color would not have to account for the existing
2113 environmental justice challenges in that community?

2114 Ms. Tierney. I would agree with what you said. Yes, I think

2115 that would be the case.

2116 Ms. Barragan. Great. Well, you know, I represent a
2117 district that is one of the most heavily polluted districts in
2118 this country which includes the Port of L.A. And there is only
2119 four districts in California that are poorer than my district
2120 and oftentimes it feels like people come to our communities
2121 because they think the community won't stand up because they can't
2122 or because they are working two jobs.

2123 And so, you know, climate is a real issue and a crisis, which
2124 is why our committee is working to going a hundred percent by
2125 2050. Thank you all for your work. With that I yield back.

2126 Mr. Rush. The gentlelady yields back. The chair now
2127 recognizes Mr. Long -- Mr. Olson. Mr. Olson.

2128 Mr. Olson. I thank the chair, and welcome to our four
2129 witnesses. A special howdy to Michael McMahon from my hometown
2130 of Sugarland, Texas. You all should know Texans love bigger.

2131 Bigger is better. And our hometown is the biggest town in the
2132 most populated congressional district in the country, Sugarland,
2133 Texas in Fort Bend County. We are also the most diverse county
2134 in America. So, my friend, bigger is better. Feel free to brag
2135 about our state.

2136 Mr. McMahon. Thank you, Congressman.

2137 Mr. Olson. And now let's brag about our energy. As you

2138 know, the shale revolution started in Texas with the Barnett Shale
2139 play, expanded to Permian Basin, Eagle Ford, all over the country.
2140 My question is, the point is this has been a boon for America.
2141 It has made our air cleaner. It has created hundreds of
2142 thousands of good paying jobs, not just here but overseas. It
2143 has allowed us to help countries. We talk about climate
2144 change, global warming, two countries that contribute the most
2145 that China and India, and I am proud to report that last year
2146 we signed two agreements with India for a total of \$10 billion
2147 worth of natural gas exports to India. I have met Prime Minister
2148 Modi many times. He has said renewables are our future, but
2149 natural gas from America is our present. We are making their
2150 air cleaner, the world's air cleaner by exporting natural gas
2151 to these nations. Thank you for that.

2152 One other -- it is kind of light, you probably can't see
2153 that, but that is an LNG tanker ship coming from Sabine Pass going
2154 to Estonia.

2155 [Photo.]

2156 Mr. Olson. There is a crowd of people, maybe a hundred
2157 people waving flags as that ship pulls into the dock. You know,
2158 my friend, if we move the Battleship Texas, we can't get five
2159 people to watch her move down the Port of Houston. These people
2160 are there because they know this is their freedom from Russian

2161 high prices for energy. No more shutdown over conflicts with
2162 other countries.

2163 And so, my point is, this is not just an economic boon for
2164 America, it is a diplomacy boon, a freedom boon for America.
2165 Now the problem we are having here in America is getting the
2166 product we have to the market. You deal with it every single
2167 day -- pipelines, pipelines, pipelines. We all know the safest
2168 way to transport this product is via pipeline. We also know there
2169 is all sorts of impediments. For example, Kinder Morgan is trying
2170 to build a pipeline from the Permian Basin to the Houston area
2171 to get the ships there. They are being drug down by Austin, Texas,
2172 lawsuit after lawsuit after lawsuit.

2173 You are out there working in the real world. Please tell
2174 me how lawsuits and stuff coming down from D.C., it is sort of
2175 subtle. For example, the Keystone XL Pipeline was a bellwether
2176 for people who want to attack pipelines. That pipeline was
2177 approved three times by the State Department headed by Mrs.
2178 Clinton twice and Mr. Kerry once, yet President Obama nixed it.

2179 That one single act got the whole pipeline market attacked by
2180 these groups to stop transporting these products, again, in the
2181 safest way possible.

2182 Can you elaborate on how these things in D.C. hurt your
2183 business and how we can streamline them and make it more viable

2184 without all the uncertainty of lawsuits and protests, et cetera,
2185 et cetera, et cetera?

2186 Mr. McMahon. Well, you are right, is Keystone was a
2187 bellwether event in our industry and the world has changed since
2188 then. You asked about, you know, what happens when policies are
2189 changed or take a different direction is, you know, as
2190 Commissioner LaFleur knows because I was in talking to her about
2191 2 or 3 weeks later, is when FERC announces change in policy
2192 concerning the treatment of income tax for master limited
2193 partners, they announced it on a Wednesday, or a Thursday, I am
2194 sorry, and by the following Friday, you know, nine of the largest
2195 pipeline companies that were publicly traded, including us, lost
2196 \$15 billion in market value in that timeframe. So, action --

2197 Mr. Olson. Fifteen billion dollars just like that, snap
2198 of a finger.

2199 Mr. McMahon. So it goes back to what I have been saying
2200 all day long is when you change stability and predictability and
2201 make us a more, a risky business, the markets react very badly.

2202 And that is the concern we have any time you make major shifts
2203 that affect our revenue streams.

2204 Mr. Olson. One question about FERC and maybe you want to
2205 answer this, Ms. LaFleur, as well. We worked hard to get them
2206 an office in Houston. That is coming on line. How will that

2207 impact your business and all the people around the area with a
2208 FERC office right there in Houston, Texas, pipeline central, port
2209 central, et cetera, et cetera?

2210 Ms. LaFleur. I think the primary advantage of the Houston
2211 office is that with the growth of LNG facilities it has been hard
2212 for FERC to hire enough of the kind of engineers that do the review
2213 of LNG facilities. And, guess what, there is a lot more of them
2214 in Houston than there are in Washington, D.C. And so by having
2215 an office in Houston, FERC will be able to access that job market.

2216 I believe that is the -- I mean I discussed it when I was there,
2217 so that is part of the plan.

2218 Mr. Olson. And one final question. Mr. Doyle and I have
2219 a bill that allows FERC to charge higher salaries like they did
2220 with the FEC. They had some issues there with the -- not the
2221 FEC, but the SEC in New York, all the expertise gets hired away.

2222 The big guys who told me, we hired the FERC guys because they
2223 had expertise. Is this going to be able to give you guys more
2224 authority to raise salaries for special employees?

2225 Ms. LaFleur. I supported the proposal that came out, which
2226 I believe was just for certain kinds of engineers. I actually
2227 think, and I am no longer anything to do with FERC, there is an
2228 inequity, because as the energy work has become more complicated
2229 other agencies like the Commodity Futures Trading Commission,

2230 the SEC, they get a higher pay grade for each level because their
2231 work is considered more complicated in some way.

2232 But I think FERC is right up there in complexity, so I would
2233 do it not just for the engineers, but the financial people too.

2234 Mr. Olson. I am out of time. Go, Sugarland Skeeters.

2235 Mr. Rush. The gentleman yields back. The chair now
2236 recognizes Mr. Schrader for 5 minutes.

2237 Mr. Schrader. Thank you, Mr. Chairman. I appreciate it.

2238 I guess, Mr. McMahon, why was natural gas excluded from the 1988
2239 FPA amendments?

2240 Mr. McMahon. My remembrance of that history was you saw
2241 the natural gas industry was becoming to be moving from a bundle
2242 to a transportation that started in 1985. It finished in 1992.

2243 I know of no causal link between what was happening in the gas
2244 industry, but I also know that what was happening in the electric
2245 industry is that was at a time when electrics were true monopoly
2246 providers and they had a bundled commodity and transportation.

2247 And the concern was people had no recourse when the price spiked
2248 and that was the primary reason for the change in 2006.

2249 Mr. Schrader. Ms. McMahon, would you agree with that or
2250 do you have a different take or whatever? Or excuse me, Ms.
2251 LaFleur?

2252 Ms. LaFleur. I think that part of the reason was that at

2253 that time gas companies, gas pipelines had to come in every 3
2254 years to get their rates looked at, so they thought they didn't
2255 need this refund authority because they would be looked at
2256 regularly anyway, something FERC did away with decades ago.

2257 And I think both gas and electric have changed a lot in the
2258 last 30 years, but in my mind, they are both imbued with a public
2259 necessity. The reason you can build a pipeline is because FERC
2260 says it is in the public necessity. That is why you can get
2261 eminent domain. And so, part of that public necessity, I think,
2262 is making sure the rates are just and reasonable.

2263 Mr. Schrader. Mr. Tierney, would you comment a little bit
2264 on public necessity? You indicated, I think, in your testimony
2265 it is pretty much a done deal as long as you have a buyer or
2266 purchaser out there. What about the cost-benefit analysis?
2267 Should that also be, given all the pipelines and the controversy
2268 we have heard today about building different pipelines in
2269 relatively the same area?

2270 Ms. Tierney. Yes. I really think that in order for FERC
2271 to restore credibility in its decisions and to ensure that the
2272 public interest rather than the private interests of two counter
2273 parties in a precedent agreement that FERC really does need to
2274 look at benefits and costs as part of its need analysis, and there
2275 are many things that could go into that. There are many --

2276 we have heard today about many of the benefits of access to natural
2277 gas, but there certainly are costs and many of those costs are
2278 shifted to people who aren't benefiting from natural gas:
2279 landowners who value their land at a price higher than the market
2280 price and would like to keep their farm, for example. I could
2281 on and on, but there are many different elements of a benefit-cost
2282 analysis that I think would provide a better direct case for the
2283 public interest findings.

2284 Mr. Schrader. So, Mr. McMahon, would you comment on that?
2285 Agree, disagree, and why?

2286 Mr. McMahon. Well, I think that the -- I don't really
2287 disagree with a lot with what Dr. Tierney said, but I think the
2288 challenge you have is when it comes to landowners is a true
2289 challenge is to get a pipeline from point A to point B, you are
2290 going to cross landowners and each landowner you cross may or
2291 may not view it as of being any value. That is the challenge
2292 of the industry, and we understand.

2293 And I think if you look at the number of reroutes you see
2294 on a pipeline between the time it is proposed and the time it
2295 is actually constructed, it demonstrates that we are taking those
2296 concerns. But eventually you have to go from point A to point
2297 B. And as I said earlier, as I said we are working on getting
2298 better with landowners. We still have a ways to go, but, you

2299 know, there is going to be somebody that is going to have a valid
2300 objection to your presence and that is something I haven't quite
2301 figured out how --

2302 Mr. Schrader. So, I guess we desperately need another
2303 pipeline out in the Pacific Northwest where I am from. We have
2304 one and we would like to have some redundancy there. Why not
2305 build it in the right of way? There is existing rights of way,
2306 highways. Why not -- it is going to be more circuitous, I get
2307 that. But at the end of the day you have more, I would assume
2308 more certainty you are going to get it done without all the legal,
2309 the lawsuits and all that.

2310 Mr. McMahon. We try to use existing pipeline corridors.
2311 We try to use existing power corridors. Sometimes you will see
2312 us co-locate with water pipelines, but we try to co-locate
2313 wherever possible. You know, the engineers would love to take
2314 the most, you know, straight route, but that is just not doable.

2315 So we try and, you know, I think a lot of our projects, and
2316 Commissioner LaFleur, I think will, I think this is a fair number
2317 is between 50 and 80 percent of almost every pipeline being about
2318 co-located.

2319 Ms. LaFleur. That sounds essentially right. A lot of it
2320 is co-located. It is the places that it is not where it is really
2321 more difficult.

2322 Mr. McMahon. Yes.

2323 Mr. Schrader. Seems like a way to avoid some controversy
2324 when possible. Thank you very much and I yield back, Mr. Chair.

2325 Mr. Rush. The gentleman yields back and the chair now
2326 recognizes the gentleman from North Carolina, Mr. Butterfield,
2327 for 5 minutes.

2328 Mr. Butterfield. Thank you very much, Chairman Rush, and
2329 thank you again to the witnesses.

2330 There has been a lot of discussion about the need to reform
2331 Section 5 of the Natural Gas Act. To achieve this, last week,
2332 along with Congressman Billy Long, we introduced H.R. 5718, the
2333 Protecting Natural Gas Consumers from Overcharges Act. The bill
2334 is very simple in our opinion. It amends Section 5 by taking
2335 the exact same language from 206, Section 206, to give FERC
2336 identical refund authority for natural gas and electricity.

2337 So I will begin with Ms. LaFleur. The bill that Congressman
2338 Long and I introduced gives natural gas customers, would give
2339 natural gas customers the same rate protections that electric
2340 customers currently have under the FPA. Judging by your opening
2341 statement, you would agree it seems that amending Section 5 with
2342 mirrored language from Section 206 would put natural gas customers
2343 on a more level playing field for the rates that they pay as
2344 compared to the rate protections electric customers currently

2345 enjoy. Am I on track with this?

2346 Ms. LaFleur. Yes. And I also think it would place them
2347 on a more level playing field with the pipelines, because there
2348 is an asymmetry now between the leverage that the pipelines have.
2349 That is why pipelines at times threaten to file a Section 4 if
2350 somebody brings a Section 5 against them because there is an
2351 asymmetry of power and I think it should be level.

2352 Mr. Butterfield. You also mention in your opening statement
2353 that the refund authority in Section 206 enable FERC to require
2354 almost every electric company to promptly pass along costs savings
2355 from the reduction in the corporate tax rate contained in the
2356 Tax Cuts and Jobs Act to the electric customers. Did natural
2357 gas customers have the same experience?

2358 Ms. LaFleur. No, it took much longer because FERC can't
2359 order a natural gas pipeline to file a rate case. That is not
2360 authority FERC has. So FERC had to go in a very roundabout way
2361 to make gas customers file the financial information that FERC
2362 could use and then, ultimately, 30 percent reduce their rates,
2363 over by usually more than a year, 18 months later.

2364 Mr. Butterfield. According to the Congressional Research
2365 Service, which is a part of this institution that all of us rely
2366 on very heavily, only one Section 5 rate case has been filed by
2367 a third party since 2009.

2368 Mr. Worsinger and Ms. LaFleur, can you explain why a third
2369 party may be hesitant to file a Section 5 rate case?

2370 Mr. Worsinger?

2371 Mr. Worsinger. Congressman, I believe that is because of
2372 how cost-prohibitive it is to take that case forward. In our
2373 case in the city of Wilson, we would spend more on that Section
2374 5 filing with attorneys than what it costs us for the
2375 transportation of our annual natural gas supply.

2376 Mr. Butterfield. So it is an economic consideration that
2377 you have to --

2378 Mr. Worsinger. That is correct.

2379 Mr. Butterfield. Would you agree or disagree, Ms. LaFleur?

2380 Ms. LaFleur. I think the cost is a big issue. I have heard
2381 anecdotally some small customers are afraid to file because the
2382 leverage that the pipelines have over them. And I also think
2383 since 2009 FERC has every year gone through and looked at pipeline
2384 rates. So rather than spending the money to file, the customers
2385 come into FERC and lobby for FERC to file, which it sometimes
2386 does.

2387 Mr. Butterfield. Thank you. My last question is back to
2388 Mr. Worsinger. Mr. Worsinger, natural gas prices are low right
2389 now and will continue to be for the foreseeable future, fingers
2390 crossed. Will amending Section 5 to give FERC refund authority

2391 actually, actually, actually make a difference for the people
2392 that you and I care about?

2393 Mr. Worsinger. Yes, Congressman, I believe it will. The
2394 Natural Gas Supply Association puts out an annual study based
2395 on pipeline data that has been submitted to FERC. The last study
2396 they issued looked at the years 2013 to 2017. They examined the
2397 FERC data for 32 pipelines, found 21 of those pipelines were
2398 overcollecting; the 5-year period that was \$4.6 billion. That
2399 is billion with a B. That to me, sir, is real money.

2400 Mr. Butterfield. Thank you.

2401 All right, I give you back 30 seconds, Mr. Chairman.

2402 Mr. Rush. The chair appreciates that.

2403 Mr. Butterfield. Thank you.

2404 Mr. Rush. The chair now recognizes my friend from the great
2405 state of New York, Mr. Tonko, for 5 minutes.

2406 Mr. Tonko. Thank you, Mr. Chair, and welcome to all of our
2407 witnesses. Certainly, it is an important hearing and it is great
2408 to have your input.

2409 Public interest determinations are supposed to look at the
2410 costs and the benefits of each project, and so, Chair LaFleur,
2411 can you help us understand the outcome of the Sabal Trail case
2412 more specifically? What does it mean that FERC must consider
2413 the downstream greenhouse gas emissions in projects?

2414 Ms. LaFleur. The issue in the Sabal Trail case was whether
2415 FERC had properly done its environmental review and its public
2416 interest review, and in particular whether FERC was required to
2417 look not just at the direct impacts like of the construction of
2418 the pipeline, but at the indirect impacts of the gas. Because
2419 why do you move gas? There is only two reasons. One is to burn
2420 it, either in a power plant or in an end use, and the second is
2421 to use it in an industrial process to make something. There is
2422 no other reason to move gas.

2423 So the court said, resolving something that had been in
2424 dispute for a long time, that if a pipeline was built to move
2425 gas, FERC had to consider the environmental impacts at the end
2426 of the pipeline as well as the direct ones.

2427 Mr. Tonko. Thank you very much. And during your time at
2428 FERC and since then, do you believe that the Commission has
2429 adequately addressed these given considerations?

2430 Ms. LaFleur. There has been disputes about how Sabal Trail
2431 should be interpreted. Some commissioners read it very narrowly
2432 to cover a case where there was a specific single purpose pipeline
2433 just to one power plant, but not other pipelines that were also
2434 transporting gas to be burned. I was of a view that it covered
2435 other situations, but there was a, we will say a legitimate
2436 disagreement as to what it covered. But I don't think -- I started

2437 dissenting or doing my own separate statement where I did the
2438 greenhouse gas computation myself, which that should scare
2439 everyone -- the lawyer is doing that -- because I didn't think
2440 FERC was doing it right.

2441 Mr. Tonko. Well, thank you. And I believe some
2442 commissioners have suggested that FERC isn't able to conduct this
2443 analysis, and yet as you share with us it was very interesting
2444 in your testimony that you said you did your own GHG impact
2445 analysis.

2446 Ms. LaFleur. Yes.

2447 Mr. Tonko. So, bold attempt.

2448 Ms. LaFleur. If I could do it, then, yes.

2449 Mr. Tonko. Can you give us a sense of what you did and why
2450 you believe it was important?

2451 Ms. LaFleur. Well, I felt at a minimum after Sabal Trail,
2452 at a very minimum we had to disclose and consider the GHGs. What
2453 I did was try to get as much information from the record, which
2454 the wonderful FERC staff would extract, and my own staff, of how
2455 much gas was going to go through, and I would make simplifying
2456 assumptions. Like if there was no evidence of what the gas would
2457 be used for, as a tie-in measure, I do a full burn. Imagine the
2458 pipeline was full every day, how much gas would it transmit, and
2459 if you burned it what would it put out, and then calculated it

2460 by EPA standard, GHG per ton.

2461 But if you did it more carefully in a new process, you could
2462 get real information on how much is the pipeline going to be used;
2463 what will it be used for; what will it replace. If it is replacing
2464 coal you would deduct those coal emissions from the ones that
2465 you calculated or deduct the gas from the coal, so you could do
2466 it much more precisely than I did.

2467 Mr. Tonko. So do you believe that FERC can do what you did
2468 and does the capability exist to do an even more robust --

2469 Ms. LaFleur. FERC could definitely do the math and do it
2470 more robustly than I did. The hard part is then, so you get that
2471 number, what do you balance it with? And that is where FERC would
2472 have to do more work than it does now to get the benefits in the
2473 need for the pipeline.

2474 Mr. Tonko. Thank you. And would this require using the
2475 social cost of carbon or are there other metrics that could be
2476 utilized to inform a public interest determination?

2477 Ms. LaFleur. I believe FERC could use the social cost of
2478 carbon because that is the most available metric, most available
2479 metric for measuring what the impact of the greenhouse gases is.

2480 But I think if FERC did a docket, other people might propose
2481 other ideas. I don't think that is the end of the story. But
2482 there would have to be some way to do something predictable and

2483 quantifiable.

2484 Mr. Tonko. Thank you. And, Madam Chair, you supported some
2485 projects after doing your analysis, so I am assuming you don't
2486 believe there should be no new projects under any circumstances,
2487 but rather recognize that the law requires climate impacts to
2488 be given proper consideration. Is that an accurate assessment?

2489 Ms. LaFleur. Yes, that is exactly what I believe. I am
2490 not against pipelines and I also think even that LNG export can
2491 be a part of a global climate strategy, but it has to be considered
2492 carefully. Not just either all approved, as Dr. Tierney said,
2493 or none approved. There has got to be a way -- this is FERC's
2494 job to figure out which ones are good.

2495 Mr. Tonko. Well, I agree, and I believe FERC should do a
2496 much more robust public interest determination on several
2497 factors, but at the very least consideration of climate impacts
2498 certainly are clearly required by the law right now. I thank
2499 you for that. And with that, Mr. Chair, I yield back.

2500 Mr. Rush. The gentleman yields back. Now the chair
2501 recognizes the lady from the state where the center of the
2502 attention of our democracy is focused on, the great state of New
2503 Hampshire. Ms. Kuster is recognized for 5 minutes.

2504 Ms. Kuster. Thank you very much, Chairman Rush and Ranking
2505 Member Upton, for holding this important hearing.

2506 As we heard from our witnesses, my colleagues in Congress
2507 have a clear obligation to bring the Natural Gas Act into the
2508 21st century and ensure that the Federal Energy Regulatory
2509 Commission acts in a fair manner. But fairness is truly the key
2510 word, because right now the vetting process at FERC for natural
2511 gas pipeline permitting is not fair to those who oppose or even
2512 have concerns about pipeline projects. Many of my
2513 constituents discovered this harsh reality several years ago when
2514 a pipeline project cut an indiscriminate path through my district.
2515 Property owners who stood to lose their land felt that their
2516 voices had not been heard. That pipeline would have cut through
2517 39 parcels of conservation land in 15 different towns in southern
2518 New Hampshire. These communities worked hard and invested
2519 significant resources to make sure that these lands were preserved
2520 because they recognize the tremendous important of the land
2521 region's environment, and suddenly it was in danger of being taken
2522 away.

2523 That experience is part of the reason why I introduced the
2524 Protecting Our Conserved Lands Act last year. My bill would
2525 prohibit gas pipeline companies from using eminent domain to take
2526 land that is being permanently conserved by local governments
2527 or nonprofits. For these entities, often the only hope they have
2528 of their land being saved in the face of a pipeline are the

2529 environmental reviews under the National Environmental Policy
2530 Act, and they might not even have that anymore given that the
2531 Trump administration's new proposed rules will gut that process.

2532 My bill doesn't rule out pipeline construction, but rather
2533 compels pipeline companies to work with local stakeholders to
2534 find reasonable alternative solutions. So a question for Susan
2535 Tierney.

2536 Dr. Tierney, you noted in your testimony that in the last
2537 2 decades FERC has approved 487 natural gas pipeline projects
2538 and rejected only two. Given this dramatic disparity, could you
2539 speak to the importance of taking public input seriously during
2540 the approval process, particularly given the implications for
2541 those who will be impacted by eminent domain?

2542 Ms. Tierney. Thank you for that question, Congresswoman.

2543 One of the reasons why I think it is so essential that FERC do
2544 a better job of looking at the public interest test and go beyond
2545 existence of a precedent agreement as an indicator that a pipeline
2546 approval would be in the public interest is that the conveyance
2547 of a certificate approving a pipeline enables a pipeline to go
2548 and use eminent domain, attempt to use eminent domain. If you
2549 can't determine that a project is truly in the public interest,
2550 then effectively you are going to enable the taking of land for
2551 private interests. That is really challenging for conservation

2552 land in particular that is already set aside for the public
2553 interest, so that is really attention. But even the taking of
2554 private property for a private purpose, I thought that was
2555 unconstitutional. So I would encourage an indication from
2556 Congress that FERC really needs to do a better job of upholding
2557 the public interest standard.

2558 Ms. Kuster. Well, another characteristic of New Hampshire,
2559 in addition to the first in the nation presidential primary, is
2560 a proud heritage of respecting private landowner rights. The
2561 proliferation of gas pipeline expansion has thrust the following
2562 question into the foreground: What is more important, building
2563 more fossil fuel pipelines, or respecting the individual property
2564 rights of landowners? So do you have an opinion?

2565 Ms. Tierney. I do. And I lived next to your state for 35
2566 years, so I appreciate New Hampshire's beauty and its feistiness.

2567 I will put it that way. I think that it is essential to be looking
2568 at these various public interest issues as part of the whole
2569 calculation of whether or not a pipeline is needed.

2570 In New England, in particular, every state has a goal of
2571 reducing greenhouse gas emissions, so the additions of new pipes
2572 should be looked upon with some concern about whether or not that
2573 is going to lead to stranded costs, whether that is an overbuild
2574 situation for the long term, and if my land were being taken for

2575 something that ended up not being needed I would be pretty mad.

2576 Ms. Kuster. Thank you. I appreciate that. I think FERC
2577 does not have a fair process now, but we can take a holistic
2578 approach and I am excited to work with my colleagues to get this
2579 done. I yield back. Thank you, Mr. Chair.

2580 Mr. Rush. The gentlelady yields back. The chair now
2581 recognizes Mr. Bucshon for 5 minutes.

2582 Mr. Bucshon. Thank you, Mr. Chairman.

2583 Mr. McMahon, can you specifically discuss how does the
2584 electrical market differ from the natural gas market and is there
2585 a chance that it would increase overall costs for both pipeline
2586 companies and consumers to create a similar or a parity situation
2587 between the two industries?

2588 Mr. McMahon. Yes. The electric market is if you go back
2589 in time is not nearly as competitive as the natural gas market.

2590 Our pipelines are competing with each other and our customers
2591 to move capacity. The basic structure and the way, you know,
2592 we have been -- we have been unbundled for a number of years.

2593 Electrics have just gotten there relatively in time. But I think
2594 the biggest thing that is concerning for us and the reason that
2595 it would lead to increased costs is the retroactive nature of
2596 the relief when we have been following our just and reasonable
2597 rates.

2598 And, you know, I have heard twice today about the tax
2599 increases and not passing through, and I just want to remind the
2600 committee that FERC has had a longstanding practice where it comes
2601 to gas pipelines that interstate pipelines are not allowed to
2602 engage in single ratemaking issues, so if the tax rate goes up
2603 we can't say our rate should automatically go up without taking
2604 a look at all of our costs. The same thing should work on the
2605 downside.

2606 Mr. Bucshon. Okay. Can you walk me through the process
2607 you take to resolve right-of-way easement issues without the use
2608 of eminent domain?

2609 Mr. McMahon. Yes. When we start a project, and this has
2610 been an iterative process over the years, but, and I am speaking
2611 broadly for the entirety of the membership, most of the
2612 right-of-way acquisition starts about the time the application
2613 is filed with FERC. We start meeting with landowners going
2614 through preliminary routes.

2615 At that time, if we have actually filed our application at
2616 FERC, we have had probably one to three town halls depending on
2617 the length of the project. We have met with -- we have shown
2618 the route, we have met with local officials. So we start at about
2619 the time the application is actually filed negotiating with
2620 landowners. The INGA group, as I say in my testimony, had about

2621 a 90 percent success rate of reaching agreements with landowners
2622 without ever instituting any aspect of an eminent domain
2623 proceeding. Unfortunately, we have still got some work to do
2624 to get from 90 percent down to closer to a hundred percent, but
2625 we start early and we talk often.

2626 Mr. Bucshon. Yes. I mean, I think that is important public
2627 engagement for what the necessity of the project is. When you
2628 create new pipelines does that exclude the use of that land for
2629 other purposes?

2630 Mr. McMahon. No. In most cases, and especially in kind
2631 of your area where there is a lot of farms, is we will put a pipeline
2632 in and the farmers are allowed to go ahead and farm over the top
2633 of the pipeline.

2634 Mr. Bucshon. How deep do you put your pipelines on average?
2635 Is it variable?

2636 Mr. McMahon. It varies, but unless a landowner has made
2637 a specific request, in most cases it is between 36 and 48 inches
2638 deep on a minimum side.

2639 Mr. Bucshon. Okay.

2640 Mr. McMahon. Sometimes it is deeper.

2641 Mr. Bucshon. Because I mean, I think we have created this
2642 perception that everywhere a pipeline goes the land is just not
2643 used and there is just a pipeline there and the land can't ever

2644 be used again, but that is not necessarily true.

2645 Mr. McMahon. No, it is not. In some areas, you know, in
2646 the South, you see a lot of deer stands and stuff that are using
2647 the pipeline right of way. We have worked with a lot of wildlife,
2648 you know, National Wild Turkey Foundation and others, you know,
2649 to use the right of way for actually for wildlife revegetation
2650 or wildlife uses. So we work with the landowners. We understand
2651 that we are going to be partners with them for a long time. And
2652 like I said, in most cases we are successful in reaching an
2653 agreement with the landowners.

2654 Mr. Bucshon. I mean the climate is clearly changing and
2655 we need to do what we can with technology and innovation to lessen
2656 our impact on that. I don't think there is anyone that really
2657 at this point disagrees with that premise. I just think the wrong
2658 approach would be to say, well, you know, we are going to limit
2659 infrastructure based solely on that issue.

2660 And I think there are some people talking about in the public
2661 interest they don't see fossil fuels ever in the public interest,
2662 and so that is kind of what we are up against as far as creating
2663 a balanced approach here. And so I would be hopeful that we can,
2664 whatever solution we come to with this legislation that we can
2665 create a balanced approach that takes all of those things into
2666 consideration. Thank you. I yield.

2667 Mr. Rush. The gentleman yields back.

2668 And that concludes our first panel, and I would like to thank
2669 our witnesses for joining us today on this important issue. At
2670 this time, I would ask that the staff prepare the witness table
2671 so that we may begin our second panel shortly. And I really
2672 want the panel to know you are very much appreciated and your
2673 testimony has been a source of enlightenment to the entire
2674 subcommittee. Thank you very much and enjoy the rest of your
2675 day, and have some lunch.

2676 [Whereupon, at 12:38 p.m., the subcommittee recessed, to
2677 reconvene at 12:44 p.m., the same day.]

2678 Mr. Rush. We now will hear from the second panel of esteemed
2679 witnesses and I will introduce those witnesses from my left.

2680 Ms. Maya van Rossum, the Leader of the Delaware Riverkeeper
2681 Network; Mr. Gene Barr who is the President and CEO of the
2682 Pennsylvania Chamber of Business and Industry; Mr. N. Jonathan
2683 Peress, the Senior Director of the Energy Markets and Utility
2684 Regulation for the Environmental Defense Fund; Dr. David Mallino,
2685 the Legislative and Political Direct of the Laborers
2686 International Union of North America; Mr. David Bookbinder who
2687 is the Chief Counsel of the Niskanen Center; and, Ms. Jennifer
2688 Danis who is the Staff Attorney for the Environmental Law Clinic,
2689 Columbia University School of Law. I want to thank you all

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2690 for joining us today and we look forward to your testimony. And
2691 at this time, the chair will recognize Mr. Peress for 5 minutes.

2692 STATEMENT OF N. JONATHAN PERESS, SENIOR DIRECTOR, ENERGY MARKETS
2693 AND UTILITY REGULATION, ENVIRONMENTAL DEFENSE FUND; MAYA VAN
2694 ROSSUM, LEADER, DELAWARE RIVERKEEPER NETWORK; GENE BARR,
2695 PRESIDENT AND CEO, PENNSYLVANIA CHAMBER OF BUSINESS AND INDUSTRY;
2696 DAVID MALLINO, LEGISLATIVE AND POLITICAL DIRECTOR, LABORERS
2697 INTERNATIONAL UNION OF NORTH AMERICA; DAVID BOOKBINDER, CHIEF
2698 COUNSEL, NISKANEN CENTER; AND, JENNIFER DANIS, STAFF ATTORNEY,
2699 ENVIRONMENTAL LAW CLINIC, COLUMBIA UNIVERSITY SCHOOL OF LAW

2700

2701 STATEMENT OF N. JONATHAN PERESS

2702 Mr. Peress. Thank you, Mr. Chairman, for the opportunity
2703 to appear before you to discuss implementation of the Natural
2704 Gas Act. We recognize that natural gas is a major part of the
2705 energy system and will be for some time to come. To reap the
2706 full benefits of the nation's gas abundance we need to minimize
2707 emissions from the system and use gas efficiently. We believe
2708 that well-designed energy markets should stimulate competition
2709 and reward innovation, thereby advancing the public interest and
2710 beneficial environmental outcomes.

2711 EDF is not opposed to new pipeline capacity provided it is
2712 economically justified and based on legitimate market need. To
2713 achieve that it is essential to have effective regulatory review.

2714 FERC staff have observed that pipeline capacity investments over

2715 the past 10 years have largely relieved natural gas pipeline
2716 constraints with a few notable exceptions. This suggests that
2717 it is not economically rational to add additional pipeline
2718 capacity at the rate at which we have in the recent past, and
2719 if such growth continues it may come at the expense of the
2720 financial health of the pipeline industry and investors as well
2721 as the interests of energy rate payers.

2722 In recent comments to FERC in its pipeline ROE docket, James
2723 Murchie, the CEO of one of the largest equity investment firms
2724 focused on energy infrastructure, stated, "Building unnecessary
2725 pipelines is risky to investors and a waste of capital." Put
2726 another way, adding pipeline capacity when it is not economically
2727 justified diminishes the value of existing capacity and investor
2728 expectations.

2729 What we are seeing is a disturbing trend of new pipeline
2730 capacity being proposed and built outside of rational market
2731 signals by utilities acting on both sides of the deal both as
2732 pipeline developer and pipeline customer. Such utilities are
2733 forming affiliates to develop pipelines and then signing
2734 contracts with those developers, obligating their captive retail
2735 customers to pay for unneeded pipeline capacity to benefit their
2736 shareholders. This is occurring even when and where there is
2737 excess pipeline capacity serving the same market. To date, a

2738 majority of the Commission has been unwilling to explore whether
2739 there is actual market need in such instances as required by the
2740 Natural Gas Act.

2741 That brings me to the Spire project in Illinois and Missouri.

2742 FERC approved the project based on a single contract between
2743 the pipeline developer and its affiliated gas utility without
2744 rigorous investigation of need and without reasoned consideration
2745 of information presented by other parties. Spire's
2746 preapplication solicitation for pipeline customers yielded no
2747 bona fide market interest. The Missouri Public Service
2748 Commission opposed the project stating that "Spire's application
2749 for a new pipeline does not contain sufficient detail reflecting
2750 new demand for gas capacity." Demand in the area is flat or
2751 shrinking. Numerous parties to the FERC proceeding cautioned
2752 that rate increases could arise for customers served by existing
2753 pipelines if contracts were shifted to the Spire project from
2754 those existing pipelines, which is exactly what occurred.

2755 These are precisely the types of adverse impacts to customers
2756 and existing pipelines serving the same market that the Commission
2757 is compelled to review and mitigate, but that are refusing to
2758 do so. EDF believes that FERC unlawfully approved the Spire
2759 pipeline without a sound determination that the project is in
2760 fact needed. We have petitioned the U.S. Court of Appeals for

2761 the D.C. Circuit for a review of FERC's order approving the Spire
2762 project. That is the only FERC pipeline approval we have
2763 appealed.

2764 Let me emphasize that unnecessary infrastructure imposes
2765 real damage to landowners, ratepayers, and the environment. I
2766 have visited the families and farms impacted by the Spire project.

2767 When the Commission falls short in undertaking its duties in
2768 examining the need for additional pipeline infrastructure, there
2769 are very real consequences to people who deserve better. EDF's
2770 interest is to ensure that the market efficiently channels
2771 investment to where it is needed, which does not result when FERC
2772 fails to meaningfully review the need for new pipelines and, in
2773 effect, condones anticompetitive behavior. By refusing to
2774 examine project need, the Commission may well be imposing economic
2775 harm on the very pipeline industry that they seek to safeguard.

2776 Thank you for the opportunity to appear before you today.

2777 I look forward to your questions.

2778 [The prepared statement of Mr. Peress follows:]

2779

2780 *****INSERT 5*****

2781 Mr. Rush. Thank you. The chair now recognizes in the
2782 correct order now, Ms. Maya van Rossum for 5 minutes.

2783 Ms. van Rossum, you are recognized for 5 minutes.

2784

2785 STATEMENT OF MAYA VAN ROSSUM

2786

2787 Ms. van Rossum. Thank you, Chairman Rush, Ranking Member
2788 Upton, and members of the committee for giving me the opportunity
2789 to testify here today.

2790 In my role serving as the Delaware Riverkeeper, leader of
2791 the Delaware Riverkeeper Network and founding member of a national
2792 coalition of organizations battling FERC-regulated pipelines,
2793 known as VOICES, I have experienced firsthand the many ways that
2794 the Federal Energy Regulatory Commission has abused its authority
2795 and the law in order to advance fracked gas infrastructure. The
2796 Natural Gas Act clearly needs to be reformed in order to prevent
2797 further FERC abuses.

2798 Amongst the most essential fixes is an update to FERC's
2799 mission. FERC's misplaced focus on advancing "plentiful
2800 supplies of natural gas at reasonable prices," rather than the
2801 public interest, encourages FERC to misinterpret and misuse the
2802 law to advance decisions that trample on due process, property,
2803 and states' rights. FERC's mission must be updated to focus on

2804 advancing energy sources that are genuinely in the public interest
2805 including that of future generations with a priority on advancing
2806 clean and renewable energy, and making clear that environmental
2807 rights, people's rights, states' rights, and the property rights
2808 of the public versus private industry are given priority in FERC
2809 decision making.

2810 Amongst FERC's most egregious abuses are the following:
2811 Using a strategy called tolling orders, FERC routinely puts
2812 project challengers into a legal limbo that prevents them from
2813 challenging FERC certifications in court while at the same time,
2814 FERC allows the pipeline to advance full steam ahead, exercising
2815 eminent domain and construction including clear cutting forest
2816 land, blasting through bedrock, and trenching through waterways.

2817 FERC's January 31st pronouncement that it is going to
2818 prioritize landowner rehearing requests and try to meet a 30-day
2819 review period does not displace the need for Congress to act.

2820 First, FERC has no credibility on the issue. Second, this is
2821 just a policy that can be taken away as quickly as it is now
2822 seemingly being given. Second, non-landowner challenges will
2823 only be considered "only when time permits." Some of the
2824 most important precedent-setting cases were brought by
2825 organizations like mine for the benefit of landowners and the
2826 community as a whole, but we, when we bring our challenges, we

2827 will now still be subject to tolling. And, realistically, this
2828 means that forests, wetlands, streams, wildlife, and impacted
2829 landowners and non-landowning neighbors can all continue to
2830 suffer grievous harm while we are forced by FERC into tolling
2831 order limbo.

2832 FERC continues to refuse to consider the climate changing
2833 impacts of pipelines and LNG facilities including the downstream
2834 uses, the upstream production, and during the transmission of
2835 the gas. Fracked gas is a dirty fossil fuel. It is a dirty fossil
2836 fuel that is having devastating impacts on the health, the lives,
2837 the safety, and the environments where it is taking place. And
2838 it absolutely does impact the way landowners can utilize their
2839 lands. It impacts the success of businesses and agriculture and
2840 it impacts the sense of safety and sanctity of people living in
2841 their own homes.

2842 By approving or by ignoring the harms of climate change and
2843 approving unneeded pipelines, FERC is exacerbating and even
2844 locking in our growing climate crisis and, as such, climate change
2845 is an essential part of the public interest consideration. FERC
2846 falsely claims that it has no way to consider the climate change
2847 impacts of the pipelines that it is approving, but this is a
2848 ludicrous argument that has been repeatedly debunked.

2849 The social cost of carbon is a proven and available tool.

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2850 FERC routinely undermines states' rights by issuing conditional
2851 certifications followed by quick approval for eminent domain and
2852 construction before a pipeline has received state 401
2853 certification or approvals by other agencies. This undermines
2854 the ability of states and these other agencies to engage in full,
2855 fair, and unfettered review and decision making because, frankly,
2856 it is harder to deny or modify a pipeline that is already half
2857 built. Similarly, and as a result, in a growing number of cases
2858 property rights have been taken and irreparable construction
2859 damage inflicted for a project that did not secure all needed
2860 approvals and may never be built.

2861 And just in one final note, I would just like to note that
2862 the precedent-setting contracts that you heard about earlier that
2863 are used as a demonstration of need, all too often, increasingly,
2864 routinely, these are contracts that are made by the pipeline
2865 companies with their own subsidiaries and affiliates. So it is
2866 a very clear cut case of self-dealing in trying to prove need.

2867 Thank you.

2868 [The prepared statement of Ms. van Rossum follows:]

2869 *****INSERT 6*****

2870 Mr. Rush. The chair now recognizes Mr. Barr for 5 minutes.

2871

2872 STATEMENT OF GENE BARR

2873

2874 Mr. Barr. Chair, Ranking Member, all the members of the
2875 committee, thank you very much for allowing me the opportunity
2876 to participate here today. I am the president and CEO of the
2877 Pennsylvania Chamber of Business and Industry. My name is Gene
2878 Barr. The Chamber is the largest broad-based business advocacy
2879 group in the Commonwealth of Pennsylvania. We have about 10,000
2880 members and represent roughly 50 percent of the private sector
2881 workforce. Our members include people who develop energy, move
2882 energy, sell energy, and obviously use a whole lot of energy as
2883 well.

2884 The reality is energy is necessary for economic development
2885 and many of the members here today have asked questions that
2886 certainly move directly towards that point and we would certainly
2887 concur to that. What I would like to do today is talk a little
2888 bit about what impact natural gas development has had in the
2889 Commonwealth of Pennsylvania. And it is both ironic as well as
2890 welcomed that Pennsylvania, which was the home of the petroleum
2891 industry in the United States beginning in 1859, has now basically
2892 come full circle. We are now number two in natural gas production

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2893 in the United States and, with all due respect with some of the
2894 honorable members of the committee here from Texas, we would
2895 really like to be number one. We are going to be working on that
2896 one, so we are going to keep trying.

2897 We also have the number one natural gas-producing county
2898 in the United States, Susquehanna, up in the northeast part of
2899 the Commonwealth right up against the state of New York. A year
2900 or two ago, Pennsylvania like many other states went after the
2901 Amazon projects pretty hard. Everybody wanted those jobs,
2902 well-paying jobs, and we didn't get it. I mean as in my capacity,
2903 I was certainly disappointed we did not get Amazon.

2904 The reality is we have had two Amazons in Pennsylvania.
2905 We have had a hundred thousand jobs created because of the
2906 development of natural gas in the Commonwealth of Pennsylvania.

2907 This has helped us. When you look back to when this began more
2908 than 10 years ago, the jobs that were created, and you will hear
2909 a little bit later from our colleagues in the labor industry,
2910 those jobs that were created helped the Commonwealth weather the
2911 recession that we had and we got through that because in many
2912 cases of the natural gas industry. It is feeding billions of
2913 dollars of investment now.

2914 Shell announced, and you heard it referenced earlier, a six-
2915 to seven-billion-dollar investment in western Pennsylvania for

2916 an ethane cracker. We certainly welcome that as well. The
2917 impact tax on the industry that we created a few years ago has
2918 given \$1.7 billion back to every single county in the Commonwealth
2919 of Pennsylvania for all kinds of projects including broadband,
2920 recreation, infrastructure, et cetera. There has been billions
2921 of royalties paid to landowners across the Commonwealth.

2922 And one of the things that isn't talked about a bit and I
2923 know open space is always a concern. I have talked to farmers
2924 who have said, hey, I was ready to sell the farm. People believe
2925 Pennsylvania is Philadelphia and Pittsburgh and that is about
2926 it. The reality is Pennsylvania is heavily agriculture or in
2927 many cases rural. A lot of the farms that were in trouble as
2928 many, unfortunately, many agriculture operations are in this
2929 country, they have had the ability because of royalties to save
2930 that as open space and to be able to basically take the royalties
2931 and keep that for their families and to keep that open space there.

2932 That is significant.

2933 Talked a little bit today as well about the cost savings.
2934 Consumers have saved and continue to save roughly about \$1,500
2935 per year per household. That is significant. We also heard
2936 today a little bit about the air quality improvements, CO2,
2937 certainly, but what are also called criteria pollutants have all
2938 declined as a result of increased use of natural gas. It has

2939 also helped other states too, because Pennsylvania is an energy
2940 exporter so those electrons that cross the border certainly help
2941 other states' control as well.

2942 Interestingly, we have heard today a little bit about the
2943 polarization and the partisanship. In Pennsylvania, the
2944 industry is supported by both Republicans and Democrats. One
2945 of the strongest supporters, of course, has been our current
2946 Speaker of the House in Pennsylvania, who is a Republican, but
2947 our Governor, who is a Democrat, strongly supports building out
2948 the infrastructure. The Democrats in the western part of the
2949 state particularly have already seen the benefits in terms of
2950 the Shell facility as well as the other development that is out
2951 there. The county exec, I just spoke with him yesterday in
2952 Allegheny, a strong supporter of that. He and I discussed this
2953 project.

2954 To be quite blunt, the current problem we have is an inability
2955 to grow the industry as much as we would like, frankly. There
2956 is a problem. We have got lower prices. The prices have been
2957 depressed that is a result of, unfortunately, a lessening to a
2958 large degree of investment. We have seen some adverse decisions
2959 recently. Part of that is related to our own success. Some of
2960 the wells are more prolific than the companies even thought they
2961 were, but in reality, trying to move that product out of the

2962 Commonwealth into other areas has become, certainly, a problem.

2963 Mr. Chairman, you referenced pipeline deserts. We would
2964 like to address those. We think that you hit on one of the real
2965 problems that we do have. And another thing that was noted was
2966 the fact that we are bringing Russian natural gas into Boston
2967 Harbor. To be quite blunt that shouldn't happen, not with what
2968 we have in our Commonwealth that is relatively close to New
2969 England, and bringing it in from a country that does not have
2970 our environmental standards.

2971 We are more than happy to send our natural gas up there.

2972 We are more than happy to send natural gas to other places in
2973 the world. We believe it is certainly exceptionally clean. We
2974 believe that it is very much a positive and could contribute in
2975 many ways economically as well as environmentally. I greatly
2976 appreciate the opportunity to appear before the subcommittee and
2977 look forward to your questions. Thank you.

2978 [The prepared statement of Mr. Barr follows:]

2979

2980 *****INSERT 7*****

2981 Mr. Rush. Thank you.

2982 The chair now recognizes Mr. Mallino for 5 minutes.

2983

2984 STATEMENT OF DAVID MALLINO

2985

2986 Mr. Mallino. Thank you, Mr. Chairman. On behalf of the
2987 Laborers International Union of North America, the men and women
2988 who dedicate their lives to building this country, I would express
2989 our gratitude to you and to the ranking member for inviting us
2990 to testify here today.

2991 LIUNA is an international union with more than 500,000
2992 workers in 400 local unions around the United States. We are
2993 proud to be a leader in the fight to highlight our nation's
2994 infrastructure needs and to represent the men and women in the
2995 trenches who can do something about it. LIUNA members build the
2996 nation's core infrastructure -- transportation, water systems,
2997 energy networks. We construct sewer systems, dig tunnels,
2998 assemble renewable energy projects, and build pipelines.

2999 We strive to work with our employers and industry partners
3000 to create bipartisan policies that improve opportunities for
3001 business, workers, and consumers. We strive to enact strong
3002 policies that restore sanity to the way the United States produces
3003 and distributes energy resources, while protecting consumers and

3004 the environment. During the Great Recession, unemployment in
3005 the construction sector reached nearly 30 percent. The good jobs
3006 created by the boom in North American energy development was
3007 literally a lifeline for tens of thousands of our members. These
3008 are good unionized jobs that require a high degree of training
3009 and expertise. They pay family-sustaining wages with good health
3010 insurance benefits and will help provide a pension for the workers
3011 when they retire. LIUNA has been at the forefront of the labor
3012 movement in trying to forge an energy policy that reduces
3013 greenhouse gas emissions. We encourage all members of Congress
3014 to put aside partisanship and collaborate to truly address the
3015 infrastructure and climate crises.

3016 For a construction laborer, the next election is an eternity
3017 away, but their next paycheck and their next house payment is
3018 just around the corner. Bitter political fighting in Washington
3019 is not even a distraction when you are trying to make it home
3020 safely with a fair day of pay for a hard day of work. They don't
3021 care about jobs and industries that don't exist yet when there
3022 is a job in front of them right now, one that leaves something
3023 behind and actually benefits their community and their country.

3024 I want to stress the LIUNA believes in an all-of-the-above
3025 approach to energy development. In addition to pipeline
3026 infrastructure, LIUNA members have built solar plants in the

3027 California desert, wind farms in the Midwest, and we are working
3028 on a nuclear facility in Georgia right now. Creating a political
3029 climate where energy resources are allowed to be developed after
3030 they are vetted, reviewed, and permitted will allow an enormous
3031 amount of private investments to create millions of new jobs
3032 across all sectors of the economy.

3033 Our nation's natural gas production can fully meet our
3034 domestic need for natural gas and help supply our allies and
3035 trading partners abroad as we have heard several times today.

3036 However, to take advantage of this abundance, we need to expand
3037 our energy infrastructure systems to safely, responsibly, and
3038 efficiently transport natural gas to consumers. This includes
3039 additional natural gas gathering, transmission, and distribution
3040 infrastructure to deliver this energy to power plants,
3041 manufacturers, and local natural gas utilities and consumers.

3042 Congress should be taking steps to ensure that a public
3043 policy advances these goals instead of stifling them. It is time
3044 to develop a rational energy policy that protects both the
3045 environment, consumers, creates good jobs today, and develops
3046 new industries that will be a source of jobs in the future. The
3047 Natural Gas Act establishes a framework that facilitates the
3048 timely and efficient modernization of energy infrastructure
3049 needed to connect energy producers and the consumers. LIUNA

3050 supports a common-sense energy policy, one that replaces foreign
3051 sources of energy with domestically-produced resources that
3052 fosters domestic job creation instead of funding foreign
3053 extremists. Our members support incrementally lowering
3054 emissions, which seems to make more sense than the all or nothing
3055 approach embraced by the political extremes. There is dignity
3056 in work and nobody should be attacked or degraded because they
3057 seek to earn a living or provide for their families.

3058 In the construction sector, job creation comes from
3059 investments, sometimes public investments into roads, bridges,
3060 tunnels, and water systems; sometimes from the private sector
3061 seeking to serve consumers' needs. The infrastructure buildout
3062 itself creates opportunities for America's skilled tradeworkers.

3063 In LIUNA alone, our members have seen work hours on transmission
3064 pipelines increase from around 10-1/2 million hours in 2015 to
3065 22 million hours in 2018, and LIUNA is just one of four unions
3066 who are signatory to the National Pipeline Agreement that covers
3067 the unionized work in this sector.

3068 Our brothers and sisters in the International Union of
3069 Operating Engineers, United Association of Plumbers and
3070 Pipefitters, and the International Brotherhood of Teamsters have
3071 also seen the same amount of work-hour increases. This isn't
3072 a Republican or a Democratic issue. There isn't a single American

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3073 worker who doesn't want affordable energy, good roads, safe
3074 bridges, and clean drinking water. Our policymakers should work
3075 together to achieve these goals. Thank you for the opportunity.

3076 I look forward to answering any questions, and we appreciate
3077 being invited to talk here today. Thank you.

3078 [The prepared statement of Mr. Mallino follows:]

3079

3080 *****INSERT 8*****

3081 Mr. Rush. The chair thanks the witness, and the chair now
3082 recognizes Ms. Danis for -- no, I am sorry -- Mr. Bookbinder for
3083 5 minutes. I am sorry.

3084

3085 STATEMENT OF DAVID BOOKBINDER

3086

3087 Mr. Bookbinder. Thank you. Chairman Rush, Ranking Member
3088 Upton, thank you for inviting me to testify. I am David
3089 Bookbinder, the chief counsel of Niskanen Center here in
3090 Washington, D.C. And, first, I would like to say Niskanen Center
3091 is not opposed to natural gas and Niskanen Center is not opposed
3092 to natural gas pipelines.

3093 Previously, before joining Niskanen Center I represented
3094 natural gas industry interests here in Washington, but building
3095 pipelines is not just a one-sided deal. On the other side of
3096 building pipelines are property rights, and that is a very cold
3097 term. I want to stop using the term, "property rights." I want
3098 to talk about people and their homes and their land and their
3099 farms to which they have a deep attachment. That is what we are
3100 dealing with, not something called "property rights." We are
3101 dealing with people and their land.

3102 There are a lot of problems with FERC's process. I want
3103 to briefly touch upon two procedural and one substantive. The

3104 procedural problems begin with notice. And Representative
3105 Griffith was talking before about the surprise he felt when he
3106 learned that a pipeline was coming to his district. Landowners
3107 have that same surprise when they don't get notice, which happens,
3108 but the first real problem is they get notice in a half-inch stack
3109 of paper, and buried in there is the fact, usually in one sentence,
3110 single-spaced, half-inch stack of paper, that they have a limited
3111 amount of time to intervene in FERC's administrative process.

3112 And that is important, because unless you intervene, you
3113 can't ask FERC to rehear its decision and you can't go to court
3114 to challenge FERC's decision. Intervention is critically
3115 important, yet it is something that landowners don't learn about
3116 until after the intervention deadline is passed. FERC has no
3117 regulation establishing a uniform period of intervention. They
3118 simply pick a date. It is as little as 13 days after people get
3119 that notice.

3120 People do not have enough time to understand what all this
3121 stack of paper means. They don't understand what "intervention"
3122 means. And they certainly don't understand what it means that
3123 they have to get this done in 13 days in an extremely confusing
3124 matter. For instance, just one example of this, in the documents
3125 FERC provides, or rather that the pipeline company provides, there
3126 are three separate sets of contradictory instructions as to how

3127 to intervene, and it is detailed in greater detail in my written
3128 testimony. The other problem with that initial notice is it
3129 is not provided by FERC. FERC delegates the entire process of
3130 providing the constitutionally-required Fifth Amendment due
3131 process notice. The entire thing is delegated to the pipeline
3132 company, and pipeline companies are the ones who have the least
3133 interest in providing adequate notice. And as a matter of fact,
3134 we have been becoming interested in how they do this and we asked
3135 FERC.

3136 We did a FOIA request to FERC, what policies or procedures
3137 do you have in place to ensure that pipeline companies are actually
3138 providing this notice to all the landowners? And the response
3139 was, a search of our nonpublic records have indicated we have
3140 no documents responsive to your request. That is astonishing.

3141 FERC delegates this task, this critically important
3142 constitutional task, to the pipeline companies and then has zero
3143 oversight procedures in place to see that this notice is given
3144 properly.

3145 The second procedural problem I wanted to touch upon comes
3146 at the very other end of the process. Notice on one end, the
3147 condemnation procedure on the other. And what has happened is
3148 that pipeline companies have developed something with the
3149 acquiescence of courts called quick take. And essentially what

3150 it means is they get access to the land, they get to build the
3151 pipeline, but they don't have to pay compensation until years
3152 later. And that is fundamentally unfair and runs counter to a
3153 whole lot of things that we believe in, including the whole just
3154 compensation issue. But the idea that a company can take the
3155 land, cut the trees, build the pipeline, and pay you for that
3156 years later is fundamentally unfair, and this needs to be
3157 addressed along with the notice issue.

3158 Lastly, I want to say that I actually want to thank Chairman
3159 Chatterjee and FERC for taking seriously one landowner concern,
3160 which Ms. van Rossum touched upon, which are tolling orders.
3161 And the chairman seems to have taken this to heart, and the most
3162 recent pipeline decision from the Commission came out within the
3163 required 30 days and we are appreciative that FERC has taken this
3164 seriously and is trying to do something about it. Thank you.

3165 [The prepared statement of Mr. Bookbinder follows:]

3166

3167 *****INSERT 9*****

3168 Mr. Rush. The chair thanks the witness.

3169 The chair now recognizes Ms. Danis for 5 minutes.

3170

3171 STATEMENT OF JENNIFER DANIS

3172

3173 Ms. Danis. Thank you, Chairman Rush and Ranking Member
3174 Upton, for the opportunity to testify.

3175 My clients, New Jersey Conservation Foundation and The
3176 Watershed Institute, are nonprofit environmental groups that have
3177 fought for decades to preserve New Jersey land and water. The
3178 proliferation of unnecessary fossil fuel infrastructure has
3179 emerged as a significant threat to their core mission and to the
3180 health and welfare of New Jersey residents.

3181 While I will discuss the PennEast project specifically, I
3182 want to call out two major problems with how the Commission
3183 evaluates pipelines. First, the Commission condones
3184 condemnation without requiring evidence of public need; and
3185 second, it does so without knowing whether the project could ever
3186 be built consistent with the Clean Water Act.

3187 Since PennEast's inception, lands held by these
3188 organizations or their members have been in PennEast crosshairs,
3189 their ownership threatened by eminent domain, their ecological
3190 integrity imperiled by a project purporting to satisfy the Gas

3191 Act's public need requirement with LDC-affiliate contracts.
3192 Worse, independent energy experts demonstrated that PennEast's
3193 intended service region has a glut of gas capacity. On the
3194 coldest day of the bomb cyclone, winter of 2018, New Jersey shipped
3195 gas out. There was simply too much and no shortage of
3196 infrastructure.

3197 New Jersey is not a gas desert. The state ratepayer advocate
3198 opposed PennEast, likening the certificate to winning a lottery
3199 ticket, unsupported by public need and actually causing public
3200 harm. Just last week, the project shape-shifted. Calling it
3201 an amendment, PennEast proposed an entirely new project claiming
3202 independent utility, relying on different undisclosed contracts,
3203 and sending gas to different places. This highlights the errant
3204 way the Commission administers the Gas Act.

3205 No court has heard the merits of PennEast's original flawed
3206 route. It may never be built without essential missing federal
3207 environmental authorizations. PennEast's new submission
3208 effectively acknowledges that it doesn't need to build in New
3209 Jersey, but New Jersey lands have been condemned, nonetheless.

3210 The Commission shouldn't discharge its duties in a manner
3211 preventing private companies to take land while also insisting
3212 that courts have no role in ensuring the Fifth Amendment's
3213 limitations are respected. Congress can fix the Commission's

3214 current administration in the Gas Act realigning it with its core
3215 purpose of protecting the public against excessive corporate
3216 power and halting these unacceptable practices. All PennEast
3217 needed to condemn land was a Commission certificate, but it got
3218 this by self-dealing, showing that its LDC affiliates, the ones
3219 that created PennEast specifically for this venture, would buy
3220 what it was selling, self-generated demand for capacity. These
3221 LDC affiliates pass costs along to ratepayers, while PennEast
3222 receives a 14 percent rate of return just for building.

3223 Public need and public interest are entirely absent from
3224 this equation. Not only did the Commission rely on affiliate
3225 contracts rather than market data, it skipped another part of
3226 a critically important constitutionally sufficient public use
3227 analysis, determining whether a pipeline, even if supported by
3228 genuine public need, could be built consistent with the public's
3229 interest in preserving water quality.

3230 The Commission also punted on PennEast's climate change
3231 impacts, claiming it has no way to put that on the scale. The
3232 Commission did prepare an EIS for PennEast, but openly sidestepped
3233 federal environmental authorizations. PennEast's certificate
3234 relied on an EIS lacking data for over 60 percent of the New Jersey
3235 route. Somewhere along the way, the Commission decided that
3236 certificates lacking required federal environmental

3237 authorizations satisfied Gas Act's Section 717f(h)'s public
3238 interest standard. Courts found that such certificates didn't
3239 violate the Clean Water Act because everyone understood that they
3240 don't authorize construction, therefore they can't hurt water
3241 quality. But no court has examined whether this kind of a half
3242 certificate is a constitutionally sufficient for allowing
3243 PennEast, who is not legally authorized to build this project,
3244 to seize land. Importantly, to prevent significant water
3245 quality damage, there is every indication that PennEast could
3246 not be built along the route it condemned. While the Commission
3247 can attach post-construction environmental conditions,
3248 certificates lacking federal environmental authorization should
3249 be insufficient to trigger condemnation. Landowner harm was
3250 compounded because nobody could challenge PennEast's certificate
3251 before condemnation proceeded.

3252 When we went to court to defend against condemnation, the
3253 judge -- and this happens across the country -- considered
3254 questions regarding Fifth Amendment or the fact that a half
3255 certificate was not the kind Congress anticipated when enacting
3256 Section 717f(h) to be impermissible collateral attacks. Despite
3257 legal impediments to construction, condemnation on
3258 environmentally significant lands has proceeded.

3259 The Commission's administration of the Gas Act fails to serve

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147

3260 the public, contravening the Act's main goal: protecting the
3261 public interest. The proposed Clean Future Act reform will
3262 restore this goal, allowing condemnation to proceed only for
3263 projects that the public actually needs, which can be built
3264 without destroying water and air quality. Thank you for your
3265 time.

3266 [The prepared statement of Ms. Danis follows:]

3267

3268 *****INSERT 10*****

3269 Mr. Rush. The chair thanks all the witnesses. And we have
3270 concluded the opening statements from the witnesses and now the
3271 chair recognizes himself for 5 minutes for the purposes of
3272 questioning the witnesses.

3273 Ms. Danis, I was very intrigued by your testimony, and can
3274 you focus more attention for me on the impact of eminent domain
3275 use before legal obligations are met and that you kind of
3276 thoroughly, well, at least you hit upon a lot of those abuses,
3277 are there any additional abuses that you have in mind?

3278 Ms. Danis. Thank you for your question, Chairman. I
3279 believe that two of the primary considerations that have just
3280 fallen out of Commission practice are ensuring that before the
3281 Commission condones condemnation by the pipeline applicant that
3282 a project actually could be built. People's farms should not
3283 be taken before a state that has the authorization under Section
3284 401, as we heard this morning to determine that a project is too
3285 harmful to water quality and that it can't be built, the Commission
3286 ought not to authorize condemnations before that finding.

3287 And there is really two reasons for it. One is, land will
3288 be taken for a project that may never be legally authorized to
3289 be built, and the second is that the Commission's public interest
3290 determination ought to include environmental considerations.
3291 If a state finds that a project will violate water quality and

3292 harm its residents and the access to clean and safe water, then
3293 the Commission without that information can hardly be said to
3294 be making a proper public interest determination. It can't
3295 determine what it doesn't know, and if it doesn't know that, then
3296 it can't make a public use finding that is constitutionally
3297 sufficient.

3298 Mr. Rush. Ms. van Rossum, do you think that FERC should
3299 allow preconstruction and construction to proceed prior to
3300 issuing a rehearing order? And, if you would, in your answer
3301 describe the impact that this has on surrounding communities.

3302 Ms. van Rossum. Thank you for that question. Absolutely.
3303 I think that the Federal Energy Regulatory Commission should
3304 not be approving eminent domain authority or construction prior
3305 to all permits and approvals being granted, and certainly not
3306 prior to the ability of challengers who are concerned about what
3307 is happening with a project getting their day in court.

3308 There are actually multiple pipelines where challengers,
3309 whether they were landowners or concerned community members that
3310 were going to be impacted by the devastation to the forest lands
3311 and the waterways, the environment, and impacts to the
3312 communities, filed their rehearing requests and then became the
3313 subject of tolling orders that were in place anywhere from 7 months
3314 to 2 years. And, in fact, in a number of instances, in at least

3315 I think it is 21 cases before that tolling order was lifted, before
3316 the challengers had a chance to even file their paperwork in court,
3317 the pipelines were already fully constructed and starting to
3318 operate, so they never even got to file their paperwork.

3319 The numbers are really devastating. Every time somebody
3320 files a rehearing request in order to be able to bring a challenge
3321 against a pipeline project, every time they get met with a tolling
3322 order. And again, those tolling orders are in place anywhere
3323 from 7 months to 2 years. There is no good reason for a tolling
3324 order, because when they are finally lifted it is always a denial
3325 of the rehearing request. Rehearing requests are never
3326 granted, right. So that means that we know when somebody files
3327 for a rehearing request and a tolling order is issued, we know
3328 that the tolling order is going to be denied. What that really
3329 means is that the only good reason to issue a tolling order is
3330 to give the pipeline company time to advance their project through
3331 eminent domain and through construction unfettered by a challenge
3332 by anybody. That is a tremendous misuse and abuse of authority
3333 by the Federal Energy Regulatory Commission.

3334 The tolling order practice should be ended and, in fact,
3335 the law should be amended to say if there is a tolling order in
3336 place, no eminent domain, no construction until tolling order
3337 is lifted. We maintain the status quo for everybody. That would

3338 be fair and equitable.

3339 Mr. Rush. The chair's time is up. The chair now recognizes
3340 the ranking member.

3341 Mr. Upton. Yes. I know that I had to step away for a little
3342 while so I am going to defer, and I will go at the end of the
3343 queue so I will go to Mr. Flores first.

3344 Mr. Flores. Okay. Thank you, Mr. Upton, for doing that
3345 and thank the panel for joining us today. This has been
3346 informative.

3347 Mr. Mallino, I have a couple of questions for you. First
3348 of all, the background for the first question is this. I
3349 introduced legislation in the last Congress called the Promoting
3350 Interagency Coordination for Review of Natural Gas Pipelines Act.

3351 It passed the House on a bipartisan basis in the last Congress,
3352 and basically what it does is it makes FERC the lead agency to
3353 coordinate all interagency and activities, including activities
3354 by states and local governments in a permitting process so that
3355 we have a more reliable and consistent pipeline permitting
3356 process.

3357 And so in your view, how do delays and red tape affect the
3358 work of your members?

3359 Mr. Mallino. Well, we know that a standard strategy is to
3360 delay these projects until the companies walk away. And I don't

3361 want to get into parsing numbers about approval rates and
3362 everything else, but I can guarantee you there are members of
3363 ours who have gone to work on projects that have been proposed
3364 and commitments have been signed for our members where the
3365 companies have walked away from those projects because the
3366 approval process and the repeated objections and stalling delays
3367 and court tactics and everything else have killed those projects,
3368 so it has been a real problem.

3369 Mr. Flores. Based on the experience of you and your members
3370 and your workers, how would you recommend that the permitting
3371 process be modified?

3372 Mr. Mallino. You know, I am not a permitting process expert
3373 in terms of what the process is. I don't practice that kind of
3374 law. I don't practice any kind of law, even though I have a law
3375 degree. I know better than to make those mistakes on behalf of
3376 clients.

3377 But we would like to see the process streamlined, have some
3378 concurrent timelines so that you don't have to go through this
3379 agency and then that agency and then that agency and then that
3380 agency, and then go to the Governor, and then go back to the courts.

3381 So, some sort of certainty in the process so you know what the
3382 timelines are. You give the people a chance to have their cases
3383 heard, but once a project is permitted it should go forward.

3384 Mr. Flores. Okay, great. Thanks. That is essentially
3385 what our bill does, and if you do want to take a look at it and
3386 give us some feedback that would be great.

3387 Mr. Mallino. We will.

3388 Mr. Flores. Also, continuing with you, Mr. Mallino, let
3389 me give you some background for the second question. As you are
3390 aware, we have had protesters that have protested at pipeline
3391 construction sites, either construction sites or finished
3392 pipelines, and not only have they taken firearms and attempted
3393 to damage pipelines by shooting at them, but they have also
3394 attempted to turn valves and so forth.

3395 I don't think -- they call it "free speech." I don't call
3396 it free speech. I call it terrorism. Fortunately, there have
3397 been no fatalities or serious injuries from these activities.

3398 But do you believe that these protests are becoming more common?

3399 Mr. Mallino. I think with the -- the Keystone XL Pipeline
3400 was talked about during the first panel. Those of us who were
3401 involved in the Keystone XL Pipeline from the very beginning,
3402 and the laborers were, we had a project labor agreement on that.
3403 We still have one. When that project is built, change the
3404 dynamic of the political discourse around these issues. And we
3405 have actually had workers had to be pulled off of projects because
3406 of violence and threats of violence in the past while local

3407 authorities could get things in order. And again, as I said in
3408 my testimony, nobody should be attacked or denigrated for trying
3409 to provide for their families.

3410 Mr. Flores. So your workers actually felt like they were
3411 in danger because of these --

3412 Mr. Mallino. We have had companies suspend construction
3413 and have the workers not report to work until things could calm
3414 down.

3415 Mr. Flores. When the last Pipeline Safety Act went through
3416 in this committee, I added provisions to greatly increase the
3417 fines, the criminal penalties for those types of activities.
3418 Do you think that was an appropriate measure that --

3419 Mr. Mallino. I think, you know, that is a question for you
3420 guys to deal with. We obviously think vandalism is very serious
3421 and penalties should be enforced and those crimes should be
3422 prosecuted.

3423 Mr. Flores. Do you think there are any other activities
3424 that Congress should take in this regard to keep our workers,
3425 our communities safe?

3426 Mr. Mallino. Oh, I have a whole laundry list for you.

3427 Mr. Flores. Oh, well, I would like to hear those.

3428 Mr. Mallino. I will meet with you someday. But no, we need
3429 to strike a balance here between, you know, the need of the

3430 consumers, the need, the economic needs. We don't dismiss
3431 property owners' property rights. Our members use this land.
3432 We care about environmental stewardship. To just lump us in
3433 that we are on one side or the other, you know, our union has
3434 a lot of issues on a lot of different issues and we take a balanced
3435 approach to all of them and we think that everybody should be
3436 a little bit more common sense about that.

3437 Mr. Flores. Okay. Thank you for your feedback. And, Mr.
3438 Upton, thank you for yielding me your time. I yield back the
3439 balance of my time.

3440 Mr. Rush. The gentleman yields back. The chair now
3441 recognizes Ms. Barragan for 5 minutes.

3442 Ms. Barragan. Thank you.

3443 Ms. Danis, in your written testimony you write that an
3444 accurate balancing test that prioritizes the public interest is
3445 critical. It is very important from the testimony we have heard
3446 today that FERC's application of the Natural Gas Act is out of
3447 balance. What reforms can be made to the Natural Gas Act to ensure
3448 that pipeline reviews value our constituents and landowners
3449 rather than solely corporations?

3450 Ms. Danis. I think that as Dr. Tierney testified this
3451 morning, one of the single biggest problems is skewed market
3452 signals and manufactured demands, essentially. So a reform would

3453 be to enact amendments into the statute which the Commission,
3454 and as we heard this morning is in the 1999 certificate policy
3455 statement, the Commission will not just rely on one showing of
3456 need and will not just rely on a precedent agreement which is
3457 a private contract between private parties.

3458 But in particular, the situation now is exacerbated because
3459 it is not an arm's length contract. Right now, it is a contract
3460 between a private company and its affiliate and then the situation
3461 gets worse. Its affiliate can pass any costs incurred along to
3462 ratepayers. So, in effect, everyone in my community, in your
3463 community, is paying for the pipeline company building to earn
3464 14 percent rate of return and LDC-affiliate to turn back capacity
3465 on legacy pipelines and pass the costs along to ratepayers. They
3466 get hit twice or three times in the process.

3467 Ms. Barragan. Great, thank you.

3468 Ms. van Rossum, last fall my office received a letter from
3469 your organization signed by over 100 local environmental groups
3470 calling for hearings into FERC's shortcomings in reducing fossil
3471 fuel projects and how that is impacting communities across the
3472 nation. This really resonates with me because communities in
3473 my district are frontline communities, oftentimes black and
3474 brown, that are bearing the brunt of the nation's reliance on
3475 fossil fuels.

3476 Can you please speak to the environmental justice issues
3477 from proposed pipelines that your organization and the
3478 communities it fights for has encountered?

3479 Ms. van Rossum. Absolutely. It is a very big concern that
3480 those with lesser power, those that are minorities, those that
3481 are from black and brown communities, from indigenous
3482 communities, frequently get targeted for highly polluting
3483 industrial operations including pipelines, fracked gas
3484 infrastructure, and LNG export facilities. Also, low-income
3485 communities get targeted. There needs to absolutely be a reform
3486 to the process to take into consideration the very important
3487 environmental justice issues.

3488 And I would say that many from the coalition that you heard
3489 from called the VOICES Coalition that my organization, Delaware
3490 Riverkeeper Network, helps lead, they really would like the
3491 opportunity to come during an expanded hearing to be able to speak
3492 with the members of Congress more directly about the experiences
3493 they are having and the solutions that they have identified.

3494 Ms. Barragan. Great. Your written testimony also speaks
3495 to the need for Congress to reform FERC's mission to prioritize
3496 advancing clean energy and retiring rather than expanding fossil
3497 fuel infrastructure. I am excited by this idea. Can you
3498 elaborate on it?

3499 Ms. van Rossum. Yes. So as I testified earlier, FERC is
3500 very forceful in its assertion that, really, its primary goal
3501 is about advancing fracked gas infrastructure, about advancing
3502 pipelines and LNG facilities. And in their day-to-day practice,
3503 they very frequently, while they will allow people to speak about
3504 environmental and climate change issues on the record, they
3505 actually ignore those ramifications and ignore those harms in
3506 reality in their decisionmaking process, giving priority to the
3507 misinformation that the pipeline companies present to them for
3508 decision making.

3509 So we believe that the mission that is identified in the
3510 Natural Gas Act for the Federal Energy Regulatory Commission needs
3511 to be very, very clear with the commissioners that they do need
3512 to prioritize environmental justice. They do need to prioritize
3513 the protection of future generations. They do need to ensure
3514 that consideration of climate changing impacts and environmental
3515 impacts are given high priority.

3516 And they do need to prioritize and say that if there is
3517 another way to serve the energy needs that are being claimed by
3518 the pipeline company, for example, clean and renewable energy
3519 options, that that too needs to be given priority into the
3520 decisionmaking process and the FERC should be entitled to, and
3521 in fact should be required to reject fracked gas pipeline projects

3522 when there is a clean and renewable energy option instead.

3523 Ms. Barragan. Great. Thank you so much. I yield back.

3524 Mr. Rush. The gentlelady yields back. And now the chair
3525 recognizes my esteemed friend from the great state of West
3526 Virginia, Mr. McKinley, for 5 minutes.

3527 Mr. McKinley. Thank you. And I share that friendship with
3528 you, thank you. And you have always been fair and these are good
3529 hearings we have.

3530 I represent northern West Virginia, north central West
3531 Virginia, right in the heart of the Marcellus and Utica and the
3532 operation. And when I go back to the district and I have my town
3533 hall meetings or roundtable discussions, the school boards, the
3534 county commissioners, individuals can't comprehend that
3535 Washington would even consider stymieing this reformation in our
3536 economy in West Virginia, that they would stop the pipelines,
3537 they would stop the fracking.

3538 So, I thank you, Ms. van Rossum, and Bookbinder and Danis,
3539 you helped make my case. Your statements are spot on to show
3540 that it is true, you are a threat to this economic redevelopment
3541 of West Virginia, and maybe the country for that matter, with
3542 your attitude.

3543 Because, Ms. van Rossum, let me go back to you. You were
3544 so adamantly opposed to fracking, fracking has been around, 1860,

3545 in the 1840s the hydraulic fracking taking place. We had Lisa
3546 Jackson come in here in 2011. I remember because I asked the
3547 question and said, there is no evidence at the EPA that any
3548 fracking operation has upset someone's water quality. None.
3549 2011. Now, Ms. Danis, you talked about there is excess gas.
3550 Come to West Virginia, then. We have had gas-fired power plant
3551 had to shut down during the polar vortex in 2014 because they
3552 couldn't get gas. They couldn't get pipelines constructed
3553 because of people like Bookbinder and other that are supporting
3554 the idea of banning, stopping crossing properties to get this
3555 pipeline.

3556 So I thank you for your three testimonies. You have helped
3557 make my case so I can take that back to my -- when I go back to
3558 my roundtables again to show it is a true disaster headed towards
3559 us.

3560 So let me turn to Mallino, if I could, with you, since you
3561 and I came up through the building trades, I before you.

3562 Mr. Mallino. You, a little bit. But I went to school in
3563 your congressional district, so we are even.

3564 Mr. McKinley. That is right. I would like to understand
3565 for the impact on the economy and our workers, our operating
3566 engineers, our laborers, all the people that are involved in it,
3567 what has been the economic impact of the stopping the Atlantic

3568 Coast, because we want to ship that gas down to North Carolina.
3569 They could use it and burn it cleaner than they are with coal.
3570 But he is stopped from doing that.

3571 So the Atlantic Coast Pipeline, the Mountain Valley
3572 Pipeline, show me what has been the impact of that?

3573 Mr. Mallino. I mean just to take West Virginia, for example,
3574 a laborer on one of those pipelines in West Virginia or any
3575 pipeline in West Virginia will make about a 30-dollar an hour
3576 on the check wage. There is almost another 20 in fringe benefits
3577 -- pensions, health care, and associated fringe benefits.

3578 So, every time those workers aren't working, that money,
3579 they either have to try to find something else, if there is
3580 something else out there, and we watched, you know, during the
3581 Great Recession that these jobs were the jobs that brought western
3582 Pennsylvania, central Pennsylvania, West Virginia, Ohio, brought
3583 these workers back into the economy, and without them they would
3584 have been unemployed and they would have either had to leave the
3585 industry, leave the state, go find something else. They were
3586 absolutely essential jobs and they are essential jobs to these
3587 workers.

3588 Mr. McKinley. David, do you have anything to show the delays
3589 on the Atlantic Coast Pipeline, how much money has been sitting
3590 on the table as a result of that?

3591 Mr. Mallino. I don't have that handy, Congressman. I would
3592 have to go back and take a look and we would probably pull some
3593 data. But, you know, again it is hard on those workers because
3594 they want to work.

3595 Mr. McKinley. How about the last question then, in the time
3596 that I have remaining. Often, they will say to our industry,
3597 because I started in the construction industry in '65, "These
3598 are all temporary jobs."

3599 Mr. Mallino. Right.

3600 Mr. McKinley. How do you react to when people talk our
3601 careers, they are nothing but temporary jobs?

3602 Mr. Mallino. Particularly within the unionized sector
3603 which you are familiar with, you know, these temporary jobs help
3604 you earn a pension. I don't know many temporary jobs that provide
3605 you a pension. They provide you a good, middle-class living.

3606 I don't know many temporary jobs that provide you for the course
3607 of your career, 20 or 30 years, a career. Temporary jobs aren't
3608 careers. Construction is a career. One of my colleagues
3609 here in the room often states that he has a member who is retired
3610 from his temporary jobs, you know, 25 years of temporary jobs.

3611 And, you know, these are private investments. This is not the
3612 federal government having to figure out how to pay for highways
3613 or bridges. This is private investment. These are private jobs

3614 that aren't reliant on federal spending and they are very
3615 important to our members.

3616 Mr. McKinley. Thank you.

3617 Mr. Mallino. Thank you.

3618 Mr. McKinley. My time has expired. I yield back.

3619 Mr. Rush. The gentleman yields back. The chair now
3620 recognizes Mr. Peters for 5 minutes.

3621 Mr. Peters. Thank you, Mr. Chairman. Thanks for the
3622 witnesses. I had to be away a little bit, but I did have some
3623 questions to start with Ms. Danis -- is that? So I read your
3624 information and, you know, put aside for a second whether the
3625 use of the natural gas authority under this act is the right way
3626 to regulate the industry as a whole.

3627 What I talked about at the first panel was an idea about
3628 whether you could condition the approval of a pipeline on
3629 something like methane capture, in other words to meet the benefit
3630 to the public test. Did you have any thoughts on that?

3631 Ms. Danis. Yes. And I think this goes to a point that was
3632 raised by the last question. The Natural Gas Act provides that
3633 the Commission makes a case-by-case determination about each
3634 project. If all pipelines were in the public interest, we
3635 wouldn't have certificates. And Section 717f(e) specifically
3636 provides that unless a project is in the public interest, in fact,

3637 required by the public interest, it shall be denied. And it gives
3638 the Commission broad authority to attach conditions to the
3639 certificate to ensure that it is in the public interest.

3640 That conditioning authority has been extensively used by
3641 the Commission and I see no reason under the law and with the
3642 vast reservoir of authority that the Commission has that the
3643 Commission couldn't attach conditions on a certificate to employ
3644 best available technology to reduce methane, or to ultimately
3645 weigh a project, the economics versus the environmental harm,
3646 to determine that that particular project doesn't measure up and
3647 doesn't serve the public.

3648 Mr. Peters. Okay. To me that would be one constructive
3649 way to talk about it, although I would expect we would want to
3650 have a set of standards that we would agree upon in terms of
3651 pipeline technology and I think it wouldn't be that hard to come
3652 to, I suppose.

3653 Mr. Peress, I wanted to say, to also ask you in more general
3654 terms is, how do you see the definition of natural gas as a bridge
3655 fuel? So we talk a lot about natural gas as a bridge fuel, but
3656 no one seems to have designed the bridge and some people think
3657 it is a lot longer than other people think. What is EDF's
3658 perspective on that?

3659 Mr. Peress. So in the first instance, I think market

3660 participants and those that invest capital have the biggest dog
3661 in that hunt, so to speak, in how viable their investments are
3662 in the long run. Pipelines are extremely expensive. But to get
3663 more specific to your question, one thing that the Commission
3664 has not been doing is doing a realistic assessment of the useful
3665 economic financial life of these assets when they permit them
3666 and when they are built. The system is designed for them
3667 to take evidence on that fact, so when you are, for example,
3668 building a pipeline that serves an end user in a state that has
3669 a robust climate law that requires reductions, it is probably
3670 not rational to assume that that pipeline is going to have a 50-
3671 or 60-year useful life. So ultimately, this question about a
3672 bridge fuel is a question about looking at the policies that apply
3673 to the use of natural gas in the jurisdictions in which it will
3674 be delivered and ultimately allowing investors to weigh those,
3675 presuming that FERC does what it is supposed to do from a
3676 regulatory standpoint and weighs those sorts of policies, makes
3677 a legitimate determination about the public interest considering
3678 both, you know, state/public welfare requirements.

3679 Mr. Peters. So I guess in this context then, with the
3680 Natural Gas Act, your determination of the viability of natural
3681 gas would be determined by demand according to the state
3682 regulations to which the gas would be shipped?

3683 Mr. Peress. In some circumstances the Commission needs to
3684 consider in the context of the public interest the public policy
3685 requirements in the states into which that gas is being shipped.

3686 So as I said, in a -- I mean New England is a very easy example.

3687 Mr. Peters. Right, yes.

3688 Mr. Peress. I mean you have a set of states that have very
3689 robust climate laws.

3690 Mr. Peters. Right.

3691 Mr. Peress. And what has been the outcome of that it has
3692 not been that people are stopping pipelines from being built into
3693 New England. It is that investors don't want to risk money to
3694 build pipelines that they know will not last through a meaningful,
3695 useful life in dealing with those public policy laws.

3696 Mr. Peters. How does the fact that they are using home
3697 heating oil in New England factor into the pipeline analysis?

3698 Mr. Peress. I mean pipelines are very expensive to build.
3699 What has happened in New England is that is pure and simple,
3700 the cost of building pipelines has not been worth the returns
3701 that investors would pursue. And so, yes, if there was short-term
3702 access to lower-emitting fuels that would be a good thing, but
3703 that is not what is going to determine whether pipelines get built
3704 into New England.

3705 Mr. Peters. Thank you.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

167

3706 Mr. Rush. The gentleman yields back. The chair now

3707 recognizes Mr. Griffith for 5 minutes.

3708 Mr. Griffith. Thank you very much, Mr. Chairman. First,

3709 I would ask unanimous consent to introduce a letter from Karolyn

3710 Givens about her experience with the pipeline in our area. Not

3711 your area, my area.

3712 Mr. Rush. Seeing no objections, so ordered.

3713 [The information follows:]

3714

3715 *****COMMITTEE INSERT*****

3716 Mr. Griffith. I appreciate that very much. I am not going
3717 to bore the committee with a recitation of all the things I said
3718 previously. I appreciate Dr. Bookbinder mentioning some of the
3719 frustrations that my constituents have felt in his statement.

3720 We definitely have to have more meetings and we need to find
3721 a way that we can respect property owners, the people, the land.

3722 As I said earlier, one of the folks, and these folks I have
3723 actually mentioned by name today are here and have been here for
3724 the whole hearing. These are folks who are invested in the land,
3725 family land. I know it has got to be true in other parts of the
3726 country too, but, you know, in my neck of the woods people have
3727 been on the land or their families have been on the land for 100
3728 or plus, 100-plus years in many cases.

3729 So the question that comes up is how can we incentivize
3730 companies to figure out a way to reach a resolution with
3731 landowners, because while there may be people who just want to
3732 stop -- and I recognize that, I don't remember who said it now,
3733 Mr. Barr or Mr. Mallino -- who may want to just stop pipelines
3734 at all costs, a lot of the folks in my area are just concerned
3735 that they put it on the wrong part of the farm. If they would
3736 move it this way or move it that way, or take steps to not, you
3737 know, when they are putting it in they would recognize, for
3738 example, we have karst formation, you know, don't -- it may just

3739 appear to be a shallow cave to you, but it is something that the
3740 family has been using, going in and out of exploring for years.

3741 Let's not blow it up. Move it someplace where you don't have
3742 to break something up. Anybody got any ideas on how we can
3743 incentivize the process so that companies instead of just coming
3744 in and saying, here is where we are going, and drawing a line
3745 on a map and then fighting tooth and nail to make that line work,
3746 try to figure out ways to accommodate historical, cultural, and
3747 topography differences that actually might make it better in the
3748 long run and make the community feel more a part of the process?
3749 Anybody got any ideas?

3750 Yes, Mr. Barr. Go ahead.

3751 Mr. Barr. I will be happy to chime in. I believe it was
3752 Mr. Mallino who mentioned about some folks who want to block it
3753 all, and to be honest, there is a lot of that.

3754 Mr. Griffith. Sure, there is some of that. Yes.

3755 Mr. Barr. There are people who legitimately don't want
3756 fossil fuels, period, and see this as an opportunity. I think
3757 companies, the ones that I have seen when we have had pipeline
3758 projects in Pennsylvania, is one particularly who went down
3759 through the Lancaster, Pennsylvania area. They did meet actively
3760 with the residents there and they reached certain compromises
3761 to go around certain areas, certain stands of old trees, et cetera.

3762 I think they certainly believe it is in their best advantage
3763 to do that. I believe it expedites the process. It helps to
3764 move these things along. It helps to do that.

3765 And I think, I have seen companies do that and do that with
3766 great effect and help to move their projects along. As we heard
3767 earlier as well, unfortunately, there were still people who wanted
3768 to block the -- stand on the pipeline, block the pipelines, et
3769 cetera, and that certainly continues to be an issue, and we do
3770 see an issue with a lot of the vandalism issues in the Commonwealth
3771 of Pennsylvania as well.

3772 Mr. Griffith. Well, and I know you want to get in too, but
3773 I would just tell you that has not been our experience. And I
3774 think there was some, just some miscommunication between people
3775 within the company building one of our pipelines in particular
3776 or maybe both of them. But I have had too many constituents tell
3777 me, and in one of my counties when that board of supervisors member
3778 called me it really did look like they had just drawn a line on
3779 the map. They turned all the conservative farmers that had been
3780 there for 100 years against them in the span of a couple days
3781 just because they weren't talking to people. So not everybody
3782 does that. We have got to figure out a way how to solve that.

3783 Mr. Peress?

3784 Mr. Peress. Thank you. The pipeline industry, the

3785 pipeline developers are not a monolithic industry.

3786 Mr. Griffith. I understand that.

3787 Mr. Peress. And some pipeline developers do a far better
3788 job than others do.

3789 Mr. Griffith. And sometimes companies do a better job on
3790 one project than they do on another. I understand that.

3791 Mr. Peress. And specifically. when I spoke about the Spire
3792 project, I had been out and visited those farmers and those
3793 families and those legacies. And the challenge that they have
3794 had is Spire is not an experienced pipeline developer. They are
3795 chasing a buck. And so, typically, you see a company like that
3796 that does a worse job in terms of dealing with landowners and
3797 landowner rights than some of the other companies that have been
3798 doing this for years. There needs to be minimum standards that
3799 they cannot be seizing land in advance of being fully permitted
3800 and reviewed.

3801 Mr. Griffith. All right. And minimum standards makes this
3802 -- Dr. Bookbinder, I have about 8 seconds. Sorry.

3803 Mr. Bookbinder. Yes. One of the things I would suggest
3804 would be there is a federal statute that governs how property
3805 that the federal government is going to take under eminent domain,
3806 there is a procedure that is used in terms of --

3807 Mr. Griffith. Can you recommend that for pipelines?

3808 Mr. Bookbinder. Yes. It should be available to use on
3809 pipelines.

3810 Mr. Griffith. I have to yield back. I appreciate it.
3811 Thank you.

3812 Mr. Rush. The gentleman yields back. The chair now
3813 recognizes the gentleman from Massachusetts, Mr. Kennedy, for
3814 5 minutes.

3815 Mr. Kennedy. Thank you, Mr. Chairman. Thank you for
3816 holding this hearing, and again to the second panel, thank you
3817 for being here today.

3818 As I mentioned in my earlier comments, our current energy
3819 policy is, unfortunately, sidelining communities and landowners
3820 in favor of industry interests. Back home in Massachusetts, we
3821 are watching those flaws come to life as a compressor station
3822 in Weymouth is being built despite the rejection of the local
3823 community, including an ongoing hunger strike now over a week
3824 by at least one active and engaged citizen in my district, and
3825 a recent changed circumstances that reflect significantly
3826 decreased market demands.

3827 I have called on Chairman Chatterjee to issue an immediate
3828 stop work order due to these concerns, and if he is watching I
3829 am urgently and not all that patiently waiting for his reply.

3830 FERC is allowing the project to move forward without reviewing

3831 updated information on market need since precedent agreements
3832 have fallen through since the time that the project was approved.

3833 Ms. Danis, I am not going to ask you to comment directly
3834 on the specific project, but I think your experience in PennEast
3835 is instructive. Up in Massachusetts, many advocates, experts,
3836 and citizens have gone to extreme measures to ensure that their
3837 voices are heard. As I mentioned, a hunger strike, nonviolent
3838 protests, and sit-ins included. You spoke to this briefly in
3839 your testimony, but could you outline specific barriers to public
3840 engagement and how they have impacted the PennEast project
3841 specifically for landowners?

3842 Ms. Danis. Thank you, Congressman. For the PennEast
3843 project trying to get at that question of what the economics are
3844 was really a tricky feat. We submitted a FOIA request to the
3845 Commission and we asked for their economic analysis supporting
3846 demand for the project and that the project would serve the public
3847 need. The response letter that I got back said, it is the
3848 precedent agreements and you already have them. That is a
3849 significant issue.

3850 The second significant issue that you referred to is that
3851 for the PennEast project, while the economics were done in 2015
3852 and it was unsupported then, it is 2020 now. The world has
3853 changed. Additional capacity has been brought on line. I am

3854 sure that this is happening in other communities. And
3855 communities are suffering from authorizations that were made at
3856 a time and in a manner when the economic situation and the
3857 proliferation, really, the explosion of gas capacity hadn't
3858 happened yet.

3859 Mr. Kennedy. And so building off of that, I think PennEast
3860 has proposed a split its proposed pipeline project into two
3861 separate segments. And so has PennEast demonstrated a need for
3862 those two separate segments through disclosing updated precedent
3863 agreements?

3864 Ms. Danis. No. In fact, in its new filing that happened
3865 just last week, PennEast has not even named the shippers that
3866 hold the precedent agreements for the new phase 1. And there
3867 are precedent agreements that are signed, they state but don't
3868 disclose for only about 50 percent of the capacity. And given
3869 the fact that the primary capacity was held by New Jersey LDCs,
3870 it is difficult to understand how there could be public need for
3871 New Jersey LDC shippers if those are, in fact, the shippers that
3872 are holding the contracts.

3873 Mr. Kennedy. And so you explained earlier that FERC must
3874 legally consider environmental impacts of projects as part of
3875 their public interest determination. Can you talk briefly,
3876 unfortunately, about what the consequences of the failure to meet

3877 those obligations are in your community and what it is nationwide?

3878 Ms. Danis. So I kind of break it up into two categories.

3879 One is the failure to have any Clean Water Act analysis. And
3880 in the Natural Gas Act it is very clear, the Natural Gas Act is
3881 not supreme over other federal environmental laws. The Clean
3882 Water Act, in fact, has a provision allowing states to preclude
3883 projects that would significantly damage water quality.

3884 At the time that the Commission prepared its environmental
3885 impact statement for the PennEast project, it had no information
3886 for over 60 percent of the route in New Jersey. It is really
3887 hard to understand how the Commission could do a public interest
3888 analysis that weighs environmental costs of the project with
3889 absolutely no data on what resources it would be harming.

3890 Mr. Kennedy. And can I ask you for a yes or no on this one?

3891 In your opinion, should the public interest determination also
3892 include factors like job, excuse me, potential employment and
3893 job loss? Potential employment loss or job loss, should that
3894 be part of a public interest determination?

3895 Ms. Danis. Loss from failure to construct, you mean?

3896 Mr. Kennedy. Yes.

3897 Ms. Danis. I think that the public interest determination
3898 should consider all economic factors and that is certainly one
3899 of them.

3900 Mr. Kennedy. Thank you.

3901 And, Mr. Mallino, you discussed the importance of American
3902 labor being at the forefront of reducing greenhouse gas emissions
3903 and endorsing a comprehensive strategy to combat climate change.

3904 As our economy transitions towards renewable energy in the coming
3905 years, how can we best make sure that we best work with you to
3906 prepare American workers, in about 15 seconds.

3907 Mr. Mallino. I mean our workers stand ready to help build
3908 out any infrastructure that you want that is incentivized. You
3909 know, we have been doing infrastructure our entire existence as
3910 a union. Our union endorsed, somebody made reference, I think
3911 it was disparaging, to the long markup of Waxman-Markey. LIUNA
3912 endorsed Waxman-Markey. We have endorsed a comprehensive
3913 approach to climate change and dealing with greenhouse gas
3914 emissions. But what we can't do is stand by and watch these
3915 projects get opposed individually by individually, because this
3916 is designed to trap the resources and strand the resources.

3917 And this Congress, any Congress, should take a look at these
3918 issues in a comprehensive manner and stop bowing down to the
3919 stop-this-project, stop-this-project, sign a letter opposing
3920 here, we want a comprehensive approach to climate change and we
3921 want comprehensive investments to make these transitions good
3922 for workers, but we are not going to do it when we are fighting

3923 these fights over one project after one project, because there
3924 will never be one project that has a hundred percent unanimity.

3925 I would love to have some projects that are identified by
3926 environmental groups that they can live with that we could work
3927 and move forward on. But there is a dearth of them, whether
3928 it is renewable projects or natural gas projects or whatever it
3929 is, it is we are fighting this fight every single battle, every
3930 single project. Not even energy projects, every single
3931 construction project has some NIMBY who doesn't want it to go
3932 forward. And we can't plan for, our workers can't plan for their
3933 retirements and their futures -- sorry, Mr. Chairman -- in that
3934 kind of climate.

3935 Mr. Kennedy. Thank you, sir. I yield back.

3936 Mr. Rush. The gentleman yields back. The chair now
3937 recognizes the gentleman from Ohio, Mr. Long, for 5 minutes.

3938 Mr. Johnson. I will take that. I am Bill Johnson from Ohio.

3939 Mr. Rush. I am sorry.

3940 Mr. Johnson. Thank you, Mr. Chairman. It has been a long
3941 day.

3942 Mr. Rush. It has been a long day. You don't know how long.

3943 Mr. Johnson. Mr. Mallino, it is good to see you here with
3944 us today. I wish my colleague, Mr. McKinley, were still here.

3945 I would point out that if you had driven just a little bit further

3946 west, rather than stopping to go to school in West Virginia you
3947 could have come to, you know, the home of three of the top
3948 candidates for the Heisman Trophy, The Ohio State University,
3949 right?

3950 But it is good to see you. So, I wanted to ask you, I know
3951 that LIUNA members don't just work on pipelines. Can you talk
3952 more specifically about the types of energy construction jobs
3953 that your members perform?

3954 Mr. Mallino. Sure. It runs the gamut, in all honesty,
3955 from, you know, building transmission projects like pipelines.

3956 On coal-fired power plants, our members do turnaround work when
3957 those power plants have to come off line and be tuned up. Our
3958 members in Ohio and West Virginia often rely on those hours, on
3959 those turnaround hours on coal-fired power plants. In Georgia,
3960 we have massive amounts of numbers and job hours on the nuclear
3961 power plant that is being built down in Georgia right now.

3962 It runs the gamut, which is why we have to be an
3963 all-of-the-above energy union. We have a responsibility to
3964 represent the people who belong to our union and we do that and
3965 we try to do it very well. But if it is an energy project, it
3966 has probably got some component of a laborer, hopefully a
3967 unionized laborer, on it.

3968 Mr. Johnson. Okay. Mr. Barr, our neighbor across the

3969 border, you are our neighbor across the border in Pennsylvania,
3970 of course, and you mentioned in your testimony the \$6 billion
3971 ethane cracker plant there in Manaca that is currently under
3972 construction. As you might know, right across the river in my
3973 district we are sitting on pins and needles about another ethane
3974 cracker plant, potentially, in my district. In your estimation,
3975 based on your experience there in Pennsylvania, what does that
3976 project mean for the economy of Pennsylvania and our region and
3977 what can we expect to see with the project in Ohio?

3978 Mr. Barr. If you are successful, and good luck, first, the
3979 estimates are, the studies are that that area could support
3980 probably beyond the Shell facility, probably three other
3981 crackers. There is enough natural gas there to make that
3982 significant of a change. What we anticipate is in addition to
3983 the labor work that is being done on that site now, it is one
3984 of the biggest construction sites in the U.S. as I understand
3985 it, there will be hundreds of well-paying jobs right at the
3986 facility. In addition to that, the feedstock from that factory
3987 will make products that every citizen in the United States needs.

3988 And we know we talk a lot about the fact that most jobs are
3989 small business, which is true, so those will be, in most cases,
3990 small business jobs. But the reality is, a lot of times what
3991 it takes is the kind of investment that Shell is making of six

3992 to seven billion dollars instilled in Beaver County in the area
3993 that you are describing that will take all kinds of other jobs
3994 as well, everything to service the facility, to work on the
3995 facility, full-time jobs, the products that come from it.

3996 And so I wish you all the luck in the world with that.

3997 It has been, as I mentioned, game-changing for Pennsylvania in
3998 terms of jobs and economic development. And the one thing I would
3999 note is just as an overall with natural gas, perhaps the starkest
4000 thing that I could mention is one of the advantages of having
4001 been around for a number of decades is I remember the '70s when
4002 we had disruptions in our energy supply and, you know, lines at
4003 the gas stations, but worse, the cost for our citizens and the
4004 impact on the economy. And I also spent 20 years in the petroleum
4005 industry and I was asked continually, why can't we use our own
4006 resources? We are now. We are now.

4007 And what has happened is if you note with the events that
4008 have happened in the Mideast over the last year, 20, 30 years
4009 ago that would have had an extensive impact, negative one on this
4010 country. We saw it barely with a blip and that is because we
4011 have developed our own resources in this country.

4012 Mr. Johnson. I couldn't agree with you more. I spent
4013 26-1/2 years in the Air Force and I was on active duty in the
4014 '70s when all of that took place, and I can remember having to

4015 stop about every half hour as we drove across the country to visit
4016 family to get gasoline because you could only buy a certain amount
4017 and many stations couldn't even get it. So, you are exactly
4018 right. And America's ability and our position as the world's
4019 dominant oil and gas producer in the world, right now, today,
4020 has changed the conversation on the international stage. And
4021 so I commend you for what you do. And thank you, Mr.
4022 Chairman. I yield back.

4023 Mr. Rush. The gentleman yields back. The chair now
4024 recognizes the chairman of the full committee, Mr. Pallone, for
4025 5 minutes.

4026 The Chairman. Thank you, Mr. Chairman. I did want to say
4027 that I understand the job impacts of pipeline construction and
4028 want to thank David Mallino from the Laborers Union for joining
4029 us this morning. But I am not asking you a question. I wanted
4030 to ask a question of Ms. van Rossum.

4031 Last week, Chairman Chatterjee said FERC is, quote, losing
4032 the PR battle on landowner issues specifically regarding
4033 rehearings and tolling orders as he announced a reorganization
4034 of the Office of General Counsel to more quickly address landowner
4035 rehearings. Now, Ms. van Rossum, in your written remarks you
4036 mention that the proposed reorganization may not address the
4037 underlying issues impacting landowners, so could you elaborate

4038 on that and what you think would be the best remedy for the tolling
4039 order issue?

4040 Ms. van Rossum. Thank you very much, Congressman Pallone.

4041 First off, let me put forth the best remedy. I think the best
4042 remedy is that if there is a tolling order in play, the Natural
4043 Gas Act should be very clear that the Federal Energy Regulatory
4044 Commission cannot approve the exercise of eminent domain or any
4045 level of construction until that tolling order has been lifted
4046 on any and all parties that have a rehearing request in place.

4047 That makes sure that we maintain the status quo so nobody is
4048 put at a disadvantage. It also incentivizes the Federal Energy
4049 Regulatory Commission to comply with the 30-day timeframe for
4050 responses that are actually laid out in the law.

4051 The proposal that Chairman Chatterjee put forth last week
4052 has a very significant loophole in that it says that it is going
4053 to prioritize rehearing requests from landowners, but that for
4054 in all other circumstances it will only consider rehearing
4055 requests "only when time permits." So that means that
4056 organizations like the Delaware Riverkeeper Network, the Sierra
4057 Club, and others, we will still be subject to tolling.

4058 It is very important to note that some of the most important
4059 precedent-setting legal decisions that have come out in recent
4060 years when it comes to FERC and the exercise of authority have

4061 been advanced by organizations like mine, including the
4062 oft-mentioned Sabal Trail decision as well as the decision that
4063 says to FERC, this was related to the Northeast Upgrade Project
4064 further north in the state of New Jersey, that FERC may not engage
4065 in illegal segmentation and they must consider cumulative impacts
4066 when they are considering projects. Those kinds of legal
4067 challenges are not brought by property owners and yet they will
4068 no longer be allowed to advance, so there will no longer be a
4069 check on FERC authority.

4070 The Chairman. All right. I have to move on, because I want
4071 to try to get two more in.

4072 Ms. van Rossum. Absolutely.

4073 The Chairman. Mr. Peress, could you elaborate on what it
4074 would mean for the landowners on the Spire Pipeline route, which
4075 is already in service and flowing gas, if a court ultimately ruled
4076 that FERC did not do an adequate need analysis? And 1 minute,
4077 because I have to ask the third question.

4078 Mr. Peress. Well, we have asked the court to vacate its
4079 certificate, which would mean that the pipeline has no right to
4080 be on their land. I will leave the legal process to the state
4081 process to state law in Missouri and Illinois, but I would imagine
4082 that those landowners would have every right to eject them from
4083 their land. I doubt that they would ask them to pull the pipeline

4084 up, but I think they would be able to retake their land and use
4085 it the way that they intended to.

4086 The Chairman. All right. And then my last question is for
4087 Ms. Danis. Do you believe that FERC is providing adequate
4088 opportunities for landowners and other individuals to participate
4089 in the public comment period prior to a project's approval?

4090 Ms. Danis. I believe that FERC has a lot of mechanisms in
4091 place for what they consider to be public participation, but it
4092 can hardly be said to be real public participation in a meaningful
4093 sense when there is no opportunity to have any kind of evidentiary
4094 hearing or to examine the data that is in the record.

4095 And as far as the public is concerned, the only economic
4096 analysis the public is given is the precedent agreements, and
4097 the Commission does not disclose its balancing inquiry until the
4098 moment it issues a certificate, and at that same moment
4099 simultaneously denies, for example, a motion for a request for
4100 an evidentiary hearing. So the public can submit comments. It
4101 is unclear to me what value, if any, the Commission places on
4102 those comments because 99 percent of projects are certificated
4103 over serious landowner and public objection.

4104 The Chairman. Okay, thank you. Thank you, Mr. Chairman.

4105 Mr. Rush. The gentleman yields back. The chair now
4106 recognizes my friend from the great state of New York, Mr. Tonko,

4107 for 5 minutes.

4108 Mr. Tonko. Thank you, Mr. Chair. Mr. Mallino, I listened
4109 with interest about the issue of infrastructure and you are very
4110 right. I believe if we are going to solve the climate crisis,
4111 it is going to require hardening existing infrastructure and
4112 building additional infrastructure, so I look forward to working
4113 with you and our members of Labor that will speak forcefully,
4114 I am sure, to the need for infrastructure, so I appreciate your
4115 comments.

4116 Mr. Mallino. Thank you.

4117 Mr. Tonko. Ms. Danis, I heard the exchange with a couple
4118 of my colleagues here about environmental impacts as part of the
4119 public interest determination process. What is the current legal
4120 understanding for considering climate impacts?

4121 Ms. Danis. So the current legal understanding as former
4122 Commissioner LaFleur testified this morning, is influx, to say
4123 the least, before the Commission. Some members of the Commission
4124 understand that for climate change impacts, for example, that
4125 they must do more than they are doing and there must be some way
4126 to quantify, and social cost of carbon has been mentioned.

4127 And as Commissioner Glick has said, and I think he has spoken
4128 most forcefully on it, "A public interest determination that
4129 systematically excludes the most important environmental

4130 consideration of our time is contrary to law, arbitrary and
4131 capricious, and not the product of reasoned decision making."

4132 So I concur with Commissioner Glick's view of what the public
4133 interest determination requires.

4134 Mr. Tonko. So within that current legal understanding are
4135 a project's contributions to climate change part of its
4136 environmental impact?

4137 Ms. Danis. Well, for example, in the PennEast project, the
4138 Commission disclosed in the EIS the greenhouse gas emissions
4139 associated with the project, but it is not possible to compare
4140 tonnage of greenhouse gas emissions to dollars on the other side
4141 of the scale of economic benefit. So there has got to be some
4142 way to understand the environmental impacts and to be able to
4143 really take them into consideration in the public interest
4144 determination.

4145 Mr. Tonko. And earlier this morning as you indicated,
4146 former Commissioner -- no, Chair LaFleur, stated her belief that
4147 FERC was capable of conducting this type of analysis in its review.

4148 They have information, they can put something together. She
4149 talked about doing something, you know, just with the available
4150 info she had to try and cryptically put something together.

4151 So do you have any thoughts on FERC's technical ability to
4152 more completely assess environmental impacts on projects?

4153 Ms. Danis. It begs reason to say that the Commission does
4154 not have that technical expertise. These projects and the
4155 economics associated with the projects are incredibly
4156 complicated. The designs, the plans, the mechanics of the
4157 projects are incredibly complicated. Social cost of carbon is
4158 a pretty easy math tool and it is widely accepted by federal
4159 environmental resource agencies as representing the current
4160 scientific understanding. So I have no doubt that the Commission
4161 has the technical expertise.

4162 Mr. Tonko. Thank you. And, Ms. van Rossum, do you have
4163 anything you would like to add in regard to FERC's recent public
4164 interest determinations related to climate impacts?

4165 Ms. van Rossum. Thank you so much for that opportunity.
4166 I have a little bit of a different perspective than Ms. Danis.
4167 The National Environmental Policy Act is very clear, frankly,
4168 that FERC should consider climate change impacts, and also the
4169 D.C. Circuit has been very clear that FERC should consider the
4170 climate changing impacts of pipeline infrastructure. FERC has
4171 unilaterally decided that it will ignore the law, the legislation,
4172 and the D.C. Circuit in how it decides to review pipeline projects
4173 and render decisions. And I would also note because of the
4174 use of tolling orders including with the most recent January 31st
4175 pronouncement, what will inevitably happen is another case will

4176 be brought like our challenge to the PennEast Pipeline project
4177 where we are bringing a climate change argument, but due to tolling
4178 and other factors we will be prevented from getting a final
4179 decision out of the courts until it is too late, until the project
4180 is already built and in the ground, which is what happened with
4181 the Northeast Upgrade Project when we were victorious in that
4182 case.

4183 Mr. Tonko. Thank you very much. Well, Mr. Chair, with that
4184 I yield back.

4185 Mr. Rush. The gentleman yields back. And the chair wants
4186 to indicate that the witness questioning has been concluded and
4187 it was really a thrill to have you testify before this committee,
4188 and certainly want to thank each and every one of you for your
4189 testimonies. And as you depart, I would just extend to you
4190 traveling grace as you depart back to your destinations.

4191 And I want to remind members that pursuant to committee rules
4192 that they have 10 business days to submit additional questions
4193 for the record to be answered by the witnesses who have appeared,
4194 and I ask each witness to respond promptly to any such questions
4195 that you may receive.

4196 And I request unanimous consent to enter into the following
4197 records, a letter from the Industrial Energy Consumers of America;
4198 a coalition letter from organizations representing the natural

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4199 gas industry; a memorandum from the Congressional Research
4200 Service; two letters from the National Association of
4201 Manufacturers; a report from the Center for Manufacturing
4202 Research; a report from IHS Economics; a coalition of letters
4203 from landowners offering comments on the Natural Gas Act; a letter
4204 from the Appalachian Trail Conservancy; a letter from the
4205 congressional Denver, from Congressman Denver Riggleman. Seeing
4206 no objection, so ordered.

4207 [The information follows:]

4208

4209 *****COMMITTEE INSERT*****

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4210 Mr. Rush. And this concludes our hearing, and again, I thank

4211 the witnesses.

4212 [Whereupon, at 2:15 p.m., the subcommittee was adjourned.]